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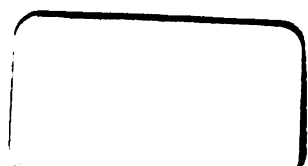
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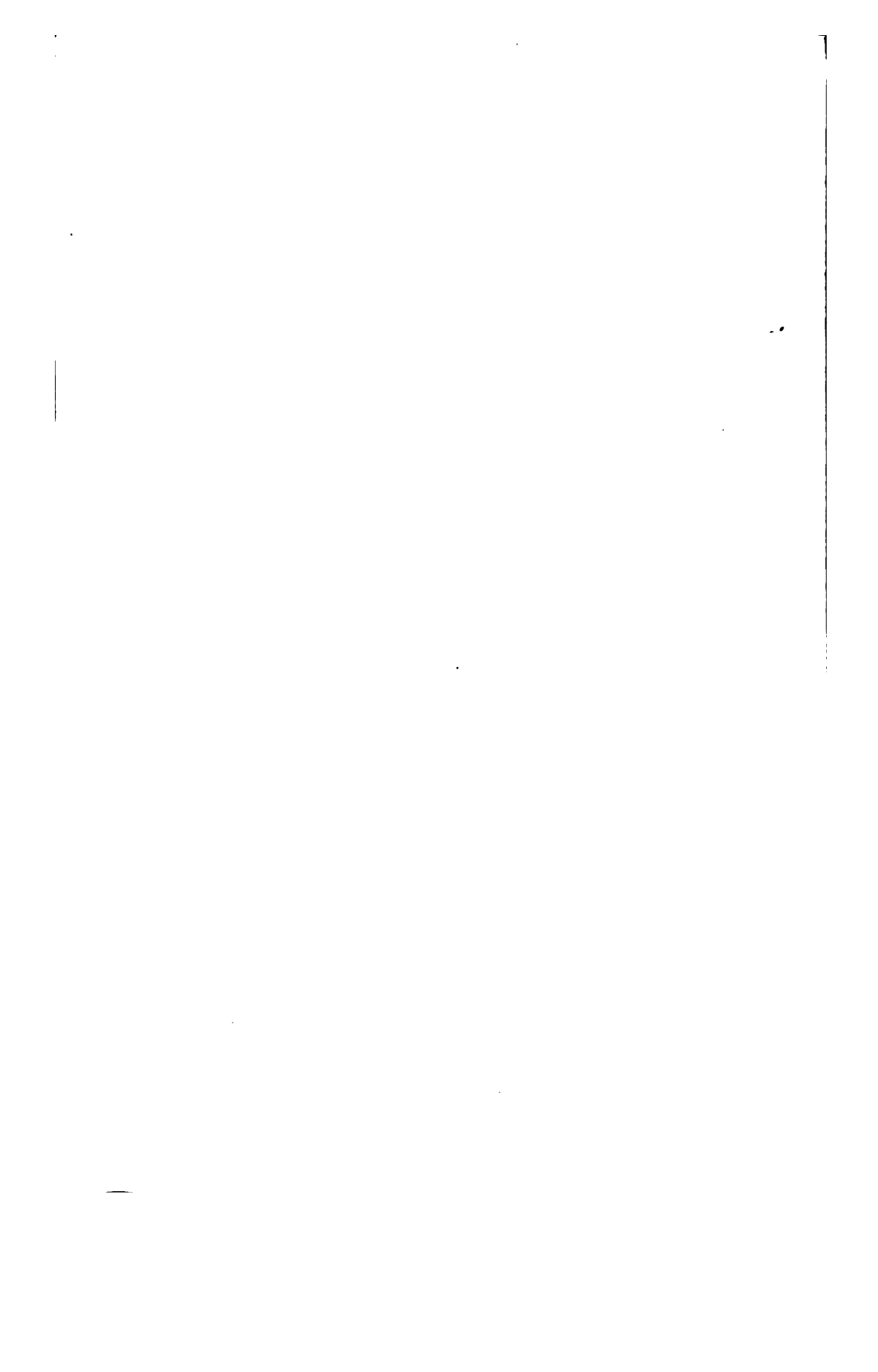
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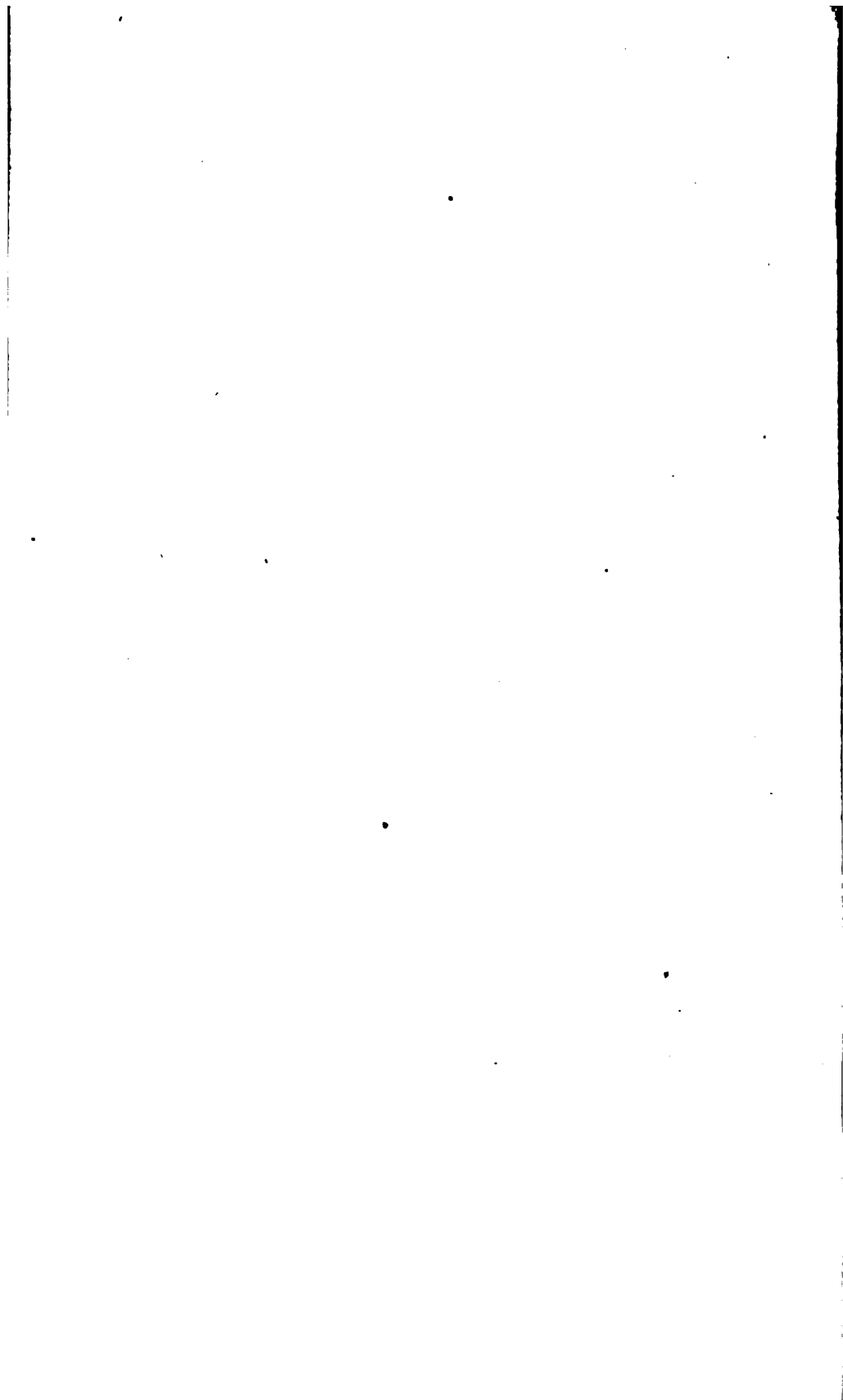


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THE LAW OF  
Collateral Inheritance, Legacy  
AND  
Succession Taxes,

EMBRACING THE AMERICAN AND MANY ENGLISH DECISIONS,

WITH FORMS FOR NEW YORK STATE, AND AN APPENDIX  
GIVING THE STATUTES OF NEW YORK, PENNSYLVANIA,  
MARYLAND, AND CONNECTICUT,

BY

BENJ. F. DOS PASSOS,

ASS'T DIST. ATT'Y N. Y. COUNTY.

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## P R E F A C E .

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THE subject of general taxation, for State and Governmental purposes, forms, undoubtedly, one of the leading questions of the day.

What property, what persons or corporations, shall be taxed; when, where and how taxes shall be levied and collected, are problems which have already consumed much of the time, and perplexed the thoughts of many leading lawyers, statesmen and economists in this country.

But no satisfactory, uniform, logical system has as yet been adopted—I might say, conceived.

Standing alone, as it were, upon its own foundations, based upon grounds incontrovertible, the taxation comprehensively known in this country as the “collateral inheritance tax,” seems to have evoked the sanction of all classes of writers and thinkers who have considered the question.

After a person is dead, and no longer capable of directing or controlling his wealth, the State, in accordance with one of the fundamental principles of social organization, steps in, continues the ownership, and permits the owner to designate either his direct or collateral heirs, or even a total stranger to his blood, to receive his inheritance. Or, if he should die without a written testament, it practically accomplishes the same results through general statutes of

descent and distribution, which devolve the property of the intestate upon his direct or collateral heirs.

While it has been stoutly questioned by some theorists, whether, when a man dies, and has neither the power to control nor the necessity to use his property, it should not wholly revert to the State, the argument cannot be treated as being of much practical importance.

The course of all civilized nations has definitely settled the question in favor of continuing the ownership.

But, as the State becomes the agent, instrument, or power, for distributing the wealth of the deceased, it seems to be conceded, upon the best possible grounds, that, for this service, it should levy a tax upon the property devolving upon the heirs.

While the argument applies almost with equal force to inheritances by *direct* heirs, and it has been so extended in England and by continental nations, in the few American States which have so far adopted this principle of taxation, the legislation has confined the tax to those cases where the property eventually devolves upon *collateral* heirs and *strangers* to the blood, turning over the property, *in solido*, to the direct heirs, unincumbered by any tax.

Considering the support which this tax has received from writers and judges, and the manifestly equitable grounds upon which it rests, it is quite surprising that it has not been adopted in all of the States of the Union. Yet, the fact is, that the collateral inheritance tax exists in about nine States only, all the federal statutes imposing the succession and legacy taxes being repealed. It was first introduced

by the Legislature of Pennsylvania in 1826. Her example was followed by Louisiana in 1828, where the tax was, however, restricted to alien heirs, and subsequently statutes were passed in Virginia in 1844; North Carolina in 1846; Maryland, 1864; Delaware, 1869; New York, 1885; West Virginia, 1887, and finally in Connecticut in 1889.<sup>1</sup>

But there seems to be little doubt that it will eventually become a law in all of the States.

A careful study of the principles and decisions established by these collateral inheritance tax laws, as well as a somewhat extended practical experience in connection therewith, convinces me that within a very short period the legislators of the different States will be called upon to consider, *inter alia*, three questions in connection with this tax:

First.—Whether the tax, which is now confined to *collaterals* and *strangers* to the blood, should not be extended to inheritances and distributions to *direct* heirs; whether, in every case, where a person receives property by reason of, or flowing from the death of another, it is not the duty, as well as the policy of the State, to levy a tax upon the inheritance. As I have intimated, the reason of the law applies as forcibly to *direct* as to *collateral* heirs; such a tax has been most successfully imposed in England; it is one easily levied and collected, and if the law be properly administered the tax will produce a very handsome revenue to each of the States that deem it good policy to enact it.

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<sup>1</sup> See *post*, ch. I, p. 11, *et. seq.* The statutes of New York, Pennsylvania, Maryland and Connecticut have been included in the Appendix.

Second.—Another question will relate to exemptions from the tax by ecclesiastical, eleemosynary and charitable institutions. A careful consideration of this subject leads me to believe that such exemptions should be most strictly curtailed and limited, if not altogether abolished by constitutional provision. Practically two States only countenance them, New York and Connecticut. Such exemptions, unless carefully restricted to charities of the almshouse class or for purely public purposes, impair the efficiency and fairness of any system of taxation, and it is probably better that the State should make a direct gift to charitable organizations instead of permitting it to be received in the form of an exemption.

Third.—But the most important question will occur in respect to the *amount* and manner of imposing the tax. Should there not be a law creating a graduated or scaling tax, by which the small inheritance shall be made to bear a small burden, and the tax gradually increased, so that when the State comes to the distribution of large estates, the distributees should be made to pay back to the people a fair and substantial contribution for the protection which the State has afforded the possessors in accumulating and preserving colossal fortunes? A graduated tax would not dwarf individual ambition, genius or exertion, nor could it be successfully maintained that such a change was socialistic or communistic in principle.

The performance of official duties in the District-Attorney's office of the County of New York in connection with the enforcement of this law, and the fact that no treatise exists on the subject in this country,



induced me to believe that I might, in an humble way, perform some service to the public and to the profession by collecting and collating all the various decisions and statutes upon this important subject. This I have conscientiously endeavored to do, and I now respectfully submit my work for fair and legitimate criticism.

BENJAMIN F. DOS PASSOS.

New York, September, 1890.



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 Wright's Appeal, 183, 185, 202, 210  
 Wright *v.* Blakeslee, 127, 159, 234  
 Wurts *v.* Hoagland, 28  
 Young Men's Ch. Assn. *v.* Mayor,  
     46, 63



## ADDENDA ET CORRIGENDA.

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1. The following cases have appeared in the reports since the completion of the text:

Neale's Est. (home for incurables—an alms-house), 10 N. Y. Supp. 713.

Herr's Will (home for consumptives—an alms-house), 10 Id. 680.

Matter of Bird (Legacies of \$500—son of adopted son), 32 N. Y. St. Rep. 899.

Matter of Sherwell (Legacies of \$500), 32 Id. 1020.

Wagner Inst. v. Phila. (Exemptions—Power of State to repeal), 132 Pa. St. 612.

2. On pp. 92, 100, 101, *note*, Alexander's Est., should read "3" instead of "4 Penn. L. J. 87."

3. On page 182, line 25, for words "this law" read "the law."

4. Page 189, second paragraph, line 9, the sentence should read, "He executed the power four years after decedent's death among," etc.

5. Page 200, line 5, for word "bar" read "tax."



# LAW OF COLLATERAL INHERITANCE, LEGACY AND SUCCESSION TAXES.

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## CHAPTER I.

### HISTORY OF COLLATERAL INHERITANCE, LEGACY, AND SUCCESSION TAXES.

- § 1. Reason for such taxes.
- 2. The tax defined.
- 3. The Roman law.
- 4. In England.
- 5. The American statutes.
  - (a) Pennsylvania.
  - (b) Louisiana.
  - (c) Maryland.
  - (d) Virginia.
  - (e) North Carolina.
  - (f) Delaware.
  - (g) Connecticut.
  - (h) West Virginia.
  - (i) New York.

§ 1. *Reasons for such taxes.*—The system or policy of taxing collateral inheritances, legacies and successions is not of modern origin. Laws relating to these taxes were in force among the Romans. In modern times, such laws will be found in full operation in many European countries, and they have existed in England for over a century, with uniform success. Their utility as a successful means of revenue has been strongly approved by writers on politi-

cal economy<sup>1</sup> and by jurists. In view of these facts, it would appear to be somewhat remarkable that this tax was not suggested or applied in the State of New York, by the Legislature, as a method of taxation, until the year 1885, more than 60 years after its successful adoption in Pennsylvania and other States.

Some eminent writers have favored these laws in their utmost severity,<sup>2</sup> because they are said to tend to distribute wealth from the hands of the few to the many, and, for the additional reason, that they tend to compel individuals to rely more upon their own exertions. This, at least, is the demonstrated economical effect of such laws.<sup>3</sup> As the theories of leading economists have been treated with great consideration by legal writers on general taxation,<sup>4</sup> it would seem that their views are equally entitled to respect upon this subject.

In England, where landed property has always been more or less locked up by a complicated system of tenures and entails, and under the rule of primogeniture is confined to the hands of the few, and where personal property is hoarded by the nobility and large corporations, and the general tendency is to centralize wealth, these reasons apply, perhaps, with superadded force.

In this country, however, where land is widely distributed, and unquestionably bears the brunt and burden of taxation (generally to an excessive degree

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<sup>1</sup> Smith's *Wealth of Nations*, pp. 683, 684 ; Mills' *Polit. Econ.*, Book V, ch. II, sec. 3.

<sup>2</sup> But see Cooley on *Taxation*, 2d ed. 30.

<sup>3</sup> Mills, *supra*.

<sup>4</sup> Cooley on *Taxation*, 2d ed. 8-12.

in proportion to what is collected from personal property), the same reasons would seem to fail of application.

Personal property; however, in proportion to its immense value, generally escapes the hands of the collector, and in some localities—especially in large cities—to an alarming extent.<sup>1</sup>

However minute and comprehensive the law applicable to the collection of this tax, a consensus of opinion seems to prevail that the hiding of such property, and the adopting of any dishonorable method to evade the duty, are matters for congratulation on the part of the citizen.

For this reason, in particular, and owing not so much to the faulty condition of the law, a large percentage of personal property annually escapes taxation in the United States, and any system that effectually reaches any portion of this property deserves commendation and study.

A collateral inheritance or succession tax, it seems, presents the most complete system for reaching the class of personal property and privileges which it is framed to embrace, because its collection is aided and facilitated by the requirement of the law that a dead man's property, so to speak, shall somewhere and at some time pass through either a Surrogate or Probate Court, as the case may be, for settlement and distribution.

Here it is generally presented to the public view upon the records, there is not so much opportunity for secrecy, and thus it is brought within easy reach of the taxing State or community.

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<sup>1</sup> Ely on Taxation in American States and Cities, 177.

§ 2. *The tax defined.*—Any exact definition of the collateral inheritance or succession tax must necessarily depend upon the language of the particular statute which may be under consideration. It will be observed, however, that so far as this country is concerned, there is a general similarity between the different enactments defining the tax and those included within and exempt from the operation of its provisions. From the similarity existing between the Pennsylvania and New York laws, the decisions of the courts of the former State, embracing a period of over sixty years, will be found on this account to be of much importance as precedents upon the many questions that may arise.

The tax may be defined generally to be a burden imposed by government upon all gifts, legacies, inheritances and successions, whether of real or personal property or both, or any interest therein, passing to certain persons (other than those specially excepted) by will, by intestate law, or by any deed or instrument made *inter vivos*, intended to take effect at or after the death of the grantor.

The theory of the promoters of collateral tax legislation is based both upon logical and legal ground, *i.e.*, that what is generally understood as the right to take by will, or from intestates, is, after all, but a mere privilege of the municipal law, to be changed, modified or repealed in the discretion of the State, and not a natural right,<sup>1</sup> and that it is only

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<sup>1</sup> 1 Blacks. Comm. B. II, 11, 12. See "Forum" for December, 1886; article by Judge Thomas, of Pennsylvania, upon "The Power of the Legislature Over the Subject of Wills, etc."

Prof. R. T. Ely, in "Taxation in American States and Cities,"

just and proper, in consideration of this privilege, that property passing by will to collaterals, remote relatives, strangers to the blood, and corporations, or, through intestate laws, to collaterals and relatives having for the most part no particular claim whatever upon the decedent, should pay to the State conferring this valuable privilege, a fair and reasonable bonus or percentage upon the value of the property thus transmitted and received. Hence these laws have been adjudged by the best authorities to impose not a mere property tax, as claimed by some, but simply a tax or duty upon the devolution or succession of property under inheritance and intestate laws. Upon this ground such taxes have uniformly been held to be constitutionally valid, both under the Federal and State Constitutions,<sup>1</sup> and it has been held that the tax is not like an ordinary tax—it is not exactly a penalty—but is more in the nature of an assessment.<sup>2</sup>

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page 519, gives in full a bill which he approves, and which was presented in the Illinois Legislature in 1887, to reform the Statutes of Descent and Wills. Its object is sweeping, being to restrict the amount any person or corporation may take from the same decedent.

Wife or husband, not over.....	\$500,000
Child, etc., not over.....	500,000
Remote relatives and others, not over.....	100,000

Such legislation would appear impracticable, or, at least, not consistent with the freedom of American institutions where private rights and property are concerned, though it has been endorsed by Mills (Polit. Econ., Book V, ch. IX, sec. 1), who agreed that collateral heirs should be entirely excluded (Id., Book II, ch. II, sec. 3).

<sup>1</sup> See Chapter II, secs. 2-15, 17.

<sup>2</sup> *Strode v. Com.* 52 Penn. St. 182.

It is not a forfeiture, because that presupposes an offense.<sup>1</sup> No matter what it may be called, or upon what interests imposed, no tax can be less burdensome, and interfere less with the productive and industrial agencies of society,<sup>2</sup> and when the subject is fairly considered, no substantial objection presents itself for not applying the tax rigidly upon all interests, testate and intestate. Possibly small estates, widows, and purely public and private charitable institutions for the gratuitous relief of the poor, sick and helpless, should, in all cases, be exempt.

§ 3. *The Roman law.*—The origin of the Collateral Inheritance or Succession Tax is plainly traceable to the Roman Civil Law. Gibbon says that it was suggested by the Emperor Augustus to the Senate, for the support of the Roman Army; that it was imposed at the rate of five per cent. upon all legacies or inheritances of a certain value, but that it was not exacted from the nearest relatives on the father's side,<sup>3</sup> and that the tax was the most fruitful as well as the most comprehensive.<sup>4</sup> It was called "*Vicesima hereditatum et legatorum.*"

§ 4. *In England.*—Its origin in England is said

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<sup>1</sup> *Arnaud v. Holland*, 3 La. 337-560; *Matter of Vanderbilt*, N. Y. Law Jour. Apl. 22, 1890; *Carpenter v. Com.* 17 How. (U. S.), 462.

<sup>2</sup> *Matter of McPherson*, 104 N. Y. 316.

<sup>3</sup> Gibbon's *Rome*, Vol. I, p. 133. Dion Cassius (Lib. 55) says: "It was imposed upon all successions, etc., except those to the nearest relatives, and to the poor." It is also mentioned by Pliny, *Panegyricus*, cap. 37.

<sup>4</sup> *Id.* p. 134. See, also, *Williams' Case*, 1827, 3 Bland's Ch. 259.



to have been first brought to public notice by Adam Smith.<sup>1</sup> There is reasonable ground for claiming that an inheritance or succession tax also existed under the feudal system, especially in the exactions which were made by the feudal lords of what are known as reliefs and primer seizins, in which the heir or successor was compelled to pay a certain sum, or perform a certain service, before he could be invested with the estates of his ancestor.<sup>2</sup> While the statutes in this country,<sup>3</sup> as a general rule, cover in one law all property passing to collaterals, etc., by will and by instrument *inter vivos*, to take effect after the death of the grantor, whether of real or personal property, in England legacy and succession taxes are imposed under independent statutes.

Only legacies of personal property were, at first, taxed in that country. Successions to real property, to which the term is more accurately restricted,<sup>4</sup> were not made liable until the year 1853. The English Legacy Act originated, in 1780, with Lord North, whose attention, it is stated, was drawn to the Roman and Holland systems by Adam Smith's book.<sup>5</sup>

As this Act did not apply to devolutions of real property, but was a species of stamp tax upon re-

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<sup>1</sup> Wealth of Nations, pp. 683, 684.

<sup>2</sup> Blacks. Comm. (Shars. Ed.), Book II, Star pp. 66-68; Wealth of Nations, p. 684.

<sup>3</sup> See Appendix, where existing statutes of New York, Pennsylvania, Connecticut and Maryland are given in full.

<sup>4</sup> Blake v. McCartney, 4 Cliff. 101.

<sup>5</sup> 3 Dowell's Hist. of Taxation, etc., in England, 148. Gibbon's History was published between 1776 and 1780; Smith's work in 1776; but it is just as likely, as Gibbon held office under Lord North, that the latter received his ideas from the former.

ceipts given for any legacy or share of the personal property of a decedent, and, being easily evaded, it was not a great source of revenue, particularly as where no receipt could be given no tax could be imposed;<sup>1</sup> so that, in 1796, Pitt adopted the Roman system, as modified in Holland, by endeavoring to have all successions taxed. He clearly discerned the effect of such a law upon the revenues of the kingdom, if it could be applied to real estate and kindred property, but the Act, as proposed to Parliament, seems to have met with opposition, for, as finally passed, it only applied to personal property and shares given under the statute of distributions. By later statute it was extended to *donationes mortis causa*.<sup>2</sup> Finally, in 1853, by the "Succession Duty Act,"<sup>3</sup> a new law came in force, taxing all successions to real property, chattels real, and a vast variety of personal property and rights not reached by the legacy act. This law owed its existence to the exertions of Gladstone, and to a certain extent displaces the legacy act, though, curiously enough, it has been held that where the legacy tax may not be imposed, the estate passing may nevertheless be liable to succession duty, and under some circumstances to both.<sup>4</sup>

The Act of Victoria is minute in its details, contains elaborate tables for the purpose of establishing the value of annuities and other interests under it

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<sup>1</sup> Green v. Croft, 2 H. Bl. 30.

<sup>2</sup> 36 Geo. III, ch. 52, sec. 7; 8 and 9 Vict. ch. 76, sec. 4; 44 Vict. ch. 12, sec. 38.

<sup>3</sup> 16 and 17 Vict. ch. 51.

<sup>4</sup> Atty.-Genl. v. Cleave, 31 L. T. N. S. 86; Atty.-Genl. v. Littleale, L. R. 5 Ex. 275.

and under the Legacy Act,<sup>1</sup> and seems to tax every conceivable interest accruing either by last will and testament, intestate laws and acts *inter vivos*, and is in some instances both prospective and retroactive.<sup>2</sup> Altogether it presents a most admirable system of taxation.<sup>3</sup>

There would seem to be, as a general rule, no exceptions allowed under this Act, even charitable corporations being taxed,<sup>4</sup> but under the "Legacy Act" husbands and wives are not taxed. The law was the same under the legacy act of Congress. The "Succession Duty Act" is more comprehensive in these respects than any of the statutes existing in this country, because its effects are sweeping, including not only strangers and collaterals, but, as we have said, lineal heirs in the ascending and descending line.<sup>5</sup> The percentage of the tax is justly graduated from one to ten per cent., which latter sum is assessed upon shares to strangers to the blood and remote relatives.<sup>6</sup>

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<sup>1</sup> 16 and 17 Vict. ch. 51, sec. 31.

<sup>2</sup> Atty.-Genl. v. Fitzjohn, 2 H. & N. 465; Wilcox v. Smith, 26 L. J. Ch. 596; Atty.-Genl. v. Middleton, 3 H. & N. 125.

<sup>3</sup> The English statutes are collated in Trevor's Taxes on Succession, 4th ed. London, p. 299, *et seq.*

<sup>4</sup> 16 and 17 Vict. ch. 51, sec. 16.

<sup>5</sup> Layton, in speaking of the Act, says: "The provisions are of a most comprehensive and searching character, so much so that it is difficult to imagine a transaction or dealing with property, to take effect upon a death after the 19th May, 1853, that will elude its operation, general or special" (Legacy and Succession Duties, 7th ed. p. 110).

<sup>6</sup> "The principle of graduation (as it is called), that is, of levying a larger percentage on a larger sum, though its application to general taxation would be, in my opinion, objectionable,

The Succession Tax is not imposed upon estates under £300,<sup>1</sup> and the Legacy Duty is not imposed when the personal property is under £100.<sup>2</sup>

That these taxes, when applied under well-drafted laws, may be made wonderfully remunerative to the State, and must lessen the general burden, is easily demonstrated by the fact that the English government now derives an enormous revenue from their enforcement.<sup>3</sup> The law, however, is still said to be open to revision.<sup>4</sup> Payment of the tax is secured by provisions which not only make the duty a first charge or lien on the property, as well as a debt to the Crown from the successor, but it also makes all persons accountable to the Crown for the duty—such as trustees and executors. We have given a few excerpts from these Acts in the notes.<sup>5</sup>

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seems to me both just and expedient as applied to legacy and inheritance duties" (Mills' Polit. Econ. Book V, ch. II, sec. 3).

<sup>1</sup> 44 Vict. ch. 12, sec. 36; 16 and 17 Id. ch. 51, sec. 18.

<sup>2</sup> 43 Vict. 14, sec. 13.

<sup>3</sup> In 1881 it amounted to £3,592,777; in 1882, £3,540,585, and in 1883, £3,536,538, or nearly \$18,000,000.

<sup>4</sup> 3 Dowell's History on Taxation, etc., in England, p. 155.

<sup>5</sup> 3 Dowell's History, p. 152; 16 and 17 Vict. ch. 51, secs. 42, 44. The principal English works treating of this topic are Layton's Legacy and Succession Duties (1888, London), Trevor's Taxes on Successions (London, 1881) and Hanson on Probate, Legacy and Succession Duties (London). For the English statutes, and decisions thereon, also consult 3 Fisher's Har. Dig. 5416-5430; 4 Id. 7480; 6 Fisher's C. L. Dig. 631. The "Legacy Act" (55 George III, chap. 184) makes the following rates payable on legacies and the residue of personal estate and real estate directed to be sold, whether the title to such residue accrues by virtue of any testamentary dispositions or upon a portion or total intestacy, whether the amount is £20 or upwards:

§ 5. *The American statutes.*—As has been said, collateral inheritance tax laws now exist in the States

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1. Children or their descendants, or parents, or other lineal ancestors, £1 per cent.
  2. Brothers or sisters, or their descendants, £3 per cent.
  3. Brothers or sisters of fathers and mothers, or their descendants, £5 per cent.
  4. Brothers or sisters of grandmothers, etc., £6 per cent.
  5. Persons of any degree of collateral consanguinity, or strangers to the blood, £10 per cent.

The "Succession Duty Act" (16 and 17 Vict. ch. 51) provides as follows: "Every past or future disposition of property by reason whereof any person ~~has~~ or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, either immediately or after interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, to any person in possession or expectancy, shall be deemed to have conferred or to confer, on the person entitled by reason of any such disposition or devolution, a 'succession,' and the term 'successor' shall denote the person entitled, and the term 'predecessor' shall denote settlor, disponent, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived."

Joint tenants taking by survivorship are deemed successors, and successions are conferred by general powers of appointment; persons entitled to real estate, subject to life leases, are not liable, and dispositions with a reservation of benefit to the grantor, etc., or to take effect at periods depending on death, or made to evade the duty are liable. The following are the rates of duty:

1. Where "successor" is the lineal issue or lineal ancestor of predecessor, £1 per cent.
2. Where he is brother, sister, or descendant of brother or sister of predecessor, £3 per cent.
3. Where he is brother or sister of father or mother, or de-

of Pennsylvania, Maryland, Virginia, West Virginia, New York, Connecticut and Delaware, and were for a time in force in North Carolina and Louisiana.<sup>1</sup>

Legacy and succession taxes were likewise imposed upon real and personal property under several different acts by Congress during the War of the Rebellion, and they were a prolific source, both of revenue and litigation to the Federal Government. They imposed a tax of 1 to 5 per cent. upon both lineal and collateral heirs, exempting only husband or wife of decedent under the legacy act, and in this respect, as well as in the terms used, were much like the English acts from which they were evidently taken.<sup>2</sup> These laws, however, with their numerous amendments, were all swept away by the Repealing Act of 1870, and it has not been thought important to present them in the Appendix.<sup>3</sup>

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scendant of brother or sister of father or mother, etc., £5 per cent.

4. Where he is brother or sister, or grandmother or grandfather, or descendant of brother or sister of grandfather or grandmother of predecessor, £6 per cent.

5. Where he stands in any other degree of collateral consanguinity to the predecessor, or is a stranger in blood to him, £10 per cent.

6. Succession subject to trusts for charitable or public purposes are liable to £10 per cent.

For tables calculating legacy and succession duties under above Acts see, also, Theobald on Wills, 3d ed. 614.

<sup>1</sup> See Statutes, Appendix; Matter of McPherson, *supra*; Ely's Taxation in American States and Cities, 1888, p. 313; Davies' System of Taxation mentions Missouri, but I have been unable to find any such law in that State.

<sup>2</sup> Scholey v. Rew, 23 Wall. 349.

<sup>3</sup> Act June 30, 1864, ch. 173, sec. 173; 13 U. S. Stat. 223-285; 13 Id. 287, secs. 124, 127, 128; 14 Id. 98-100; Repealed by Act July 14,

In this country, differing from the English method, except under the acts of Congress above referred to, these taxes have, as a rule, been imposed only upon certain collateral relatives, strangers to the blood, and corporations that are not specially exempted by law from taxation. In including both real and personal property within the purview of the law, the earliest of American statutes made a vast improvement upon the English system as embraced in the "Legacy Act," but unlike the English laws or the succession and legacy laws of Congress, too many exemptions and exceptions seem to have been made the State statutes, and thus a vast amount of property devolving upon collaterals and so called charitable institutions annually escapes taxation here which is there made to pay duty. In these respects the American system is insuperably inferior to that of England.

(a). *Pennsylvania*.—The English law evidently soon attracted attention in this State, for the first collateral inheritance act was passed in Pennsylvania in 1826. This act is, perhaps, still in force under the rulings of the Pennsylvania courts, but it has been considerably modified by various amendments, added from time to time, and recently, by the Law of 1887, the whole subject has been codified. It is said that the provisions of the new act are scarcely more than a re-enactment and consolidation of the prior laws.<sup>1</sup>

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1870, ch. 255; 16 U. S. Stat. 256-261, sec. 17, the repealing clause of which act, however, provided: "All provisions of said act shall continue in full force for levying and collecting all taxes properly assessed or liable to be assessed or accruing under the provisions of former acts or drawbacks, etc."

<sup>1</sup> Law Penn. 1887, p. 79, see Appendix; Com's. Appeal (Fage-

"The tax has contributed so essentially to the firm establishment of the credit of Pennsylvania," says an eminent judge, "and has been so long approved by the people of the State, that it is not likely ever to be given up,"<sup>1</sup> an assertion the truth of which is fully confirmed by the large revenue derived from this tax in 1889.<sup>2</sup>

(*b*). *Louisiana*.—In Louisiana, by law of 1828,<sup>3</sup> a legacy tax was imposed of 10 per cent. upon legacies to foreign heirs and citizens residing abroad. This law, as modified, was finally repealed in 1877, for what reason does not appear.<sup>4</sup>

(*c*). *Maryland*.—The Maryland law was passed in 1864, and is now contained in the Code of that State.<sup>5</sup>

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ly Est.), 128 Pa. St. 603; s. c. 18 Atl. Rep. 386; Com's. App. (Cooper's Est.), 17 Id. 1096; 5 Penn. C. R. 271; aff'd 127 Pa. St. 435; Bittinger's Est., 1889, 129 Pa. St. 338. See Estate of Del Busto (1888), 45 Leg. Int. 474; s. c. 23 W. N. C. 111, where Penrose, J., has collated and explained all the laws of Pennsylvania on the subject. The law from 1826 to 1855, will be found in 1 Purd. Dig. 214. The subject is also treated to a limited extent in Scott on Intestate Law of Pennsylvania, 1871, 535, *et seq.*

<sup>1</sup> Com. v. Coleman, 52 Penn. St. 473.

<sup>2</sup> See note, p. 17.

<sup>3</sup> Act of March 25, 1828, No. 95.

<sup>4</sup> Act 1877, p. 125, Repealing Art. 1221 to 1223 Rev. Civ. Code, and sections 3683-84 Rev. Stat. of 1870; see, also, Act March 30, 1830, sec. 1; Act March 26, 1842, sec. 4.

<sup>5</sup> See Appendix, Art. 81, p. 1242; 2 Md. Pub. Stat. 1888, Revised Code (1878), p. 117; see, also, L. 1874, ch. 483, sec. 113; L. 1864, ch. 483, sec. 115; L. 1880, ch. 44; Id. ch. 455. In this State the gift of freedom to a Slave was taxed. *State v. Dorsey*, 1848, 6 Gill, 388.



(*d*). *Virginia*.—In Virginia the law has, from time to time, existed since 1844. It imposed a tax of 5 per cent.<sup>1</sup>

(*e*). *North Carolina*.—The Statute of North Carolina upon this subject was passed in 1846,<sup>2</sup> but it seems to have suffered repeal in 1883.<sup>3</sup>

(*f*). *Delaware*.—The Statute passed in Delaware in 1869, has since been embodied in the Revised Code of that State. The act is based upon the English statutes, the tax being graduated from one to five per cent.<sup>4</sup>

(*g*). *Connecticut*.—The most recent Statute is that of Connecticut, passed in 1889, imposing a tax of 5 per cent. upon all sums over a thousand dollars.<sup>5</sup>

(*h*). *West Virginia*.—In this State a law has existed since 1887, by which a tax of two and one-half per cent. is imposed upon collateral inheritances, and where the amount of the estate is less than \$1,000 it is exempt.<sup>6</sup>

<sup>1</sup> See *Eyre v. Jacob*, 14 Grat. 422; Law, Feb. 6th, 1844; Code, 1849, ch. 36, *et seq*; Act March 28, 1863, sec. 15; Act 1866-7, p. 861, ch. 64, sec. 3. The Act of 1854 was repealed by Act of 1856; *Fox v. Com.* 16 Grat. 1. For a history of these laws see *Miller v. Com.* 1876, 27 Grat. 112.

<sup>2</sup> Law 1846, ch. 72, secs. 1, 2, Battle's Rev. 1873, p. 775, sec. 59.

<sup>3</sup> Code N. C. 1883, sec. 3867.

<sup>4</sup> See Rev. Code, Del. 1874, p. 38; Law 1869, vol. 13, ch. 390.

<sup>5</sup> See Appendix, Pub. Law Conn. 1889, ch. clxxx, p. 106.

<sup>6</sup> Warth's Code (2d ed.), 1887, ch. 32, sec. 51 *a.*; L. 1887, ch. 31.

(i). *New York*.—The law of New York was passed in 1885,<sup>1</sup> but the Statute was amended in 1887, 1889 and 1890.<sup>2</sup> This law is evidently based upon the Statutes of Pennsylvania existing prior to 1855, and with some few exceptions they differ little in substance from these early laws. The New York Statute was, however, drafted carelessly, and has been for that reason the cause of considerable judicial criticism. It has been well said, that the statute represents the crude and severe system as it existed under the Pennsylvania Act of 1826 without embodying the various amendments subsequently added thereto.<sup>3</sup> But the revenue derived by the State is rapidly increasing each year under this important law, and in the course of a few years it will be one of the most remunerative taxes imposed, facts which call strongly for a more complete and systematic law upon the subject.<sup>4</sup>

<sup>1</sup> Ch. 483, L. 1885, took effect June 30, 1885; *Matter of Howe*, 112 N. Y. 100, affg. 48 Hun, 235.

<sup>2</sup> See Appendix; Law 1887, ch. 713; Law 1889, ch. 307; *Id.* ch. 479; Law 1890, ch. 553.

<sup>3</sup> 19 Abb. N. C. 234, *note*.

<sup>4</sup> On January 7, 1890, Governor Hill, of New York, said in his message to the Legislature: "But it is respectfully suggested as worthy of the consideration of the Legislature, whether a satisfactory solution of the problem of taxing personal property may not be found in a graduated probate and succession tax upon the personal property of decedents, developing into a complete system the theory of the collateral inheritance tax. Already most estates of decedents are carefully appraised by disinterested parties through the machinery of our Surrogates' courts. Without going into details, it seems possible to devise a system requiring all estates of decedents over a certain valuation to be administered in a Surrogate's court, at least so far as to obtain an appraisal of the personal property thereof, and after allowing reasonable exemptions to the immediate next of kin, a percentage

tax may be imposed upon the remainder, reasonably graduated by an increasing percentage as the relationship of those who are to receive is more remote, and as the valuation of the estate is greater. The theory of such a graduated percentage tax is not harsh or inequitable. Such a system has, I am advised, existed for a long time in England and has worked well, and the propriety of its adoption here is suggested for your consideration."

Table showing the Revenue derived from Collateral Taxes by the following States:

	1886.	1887.	1888.	1889.	Total.
New York....	\$84,128	\$561,716	\$736,062	\$1,075,692	\$2,457,598
Pennsylvania..	662,976	763,871	713,434	1,378,458	3,518,739
Maryland.....		45,597.			
Delaware.....	913				
Connecticut...					

## CHAPTER II.

### NATURE OF TAX AND ITS CONSTITUTIONALITY.

- § 1. General power of State over taxation.
- 2. Collateral or inheritance tax is upon the privilege of succession to property.
- 3. Not a property tax.
- 4. Not a direct tax.
- 5. Taxing foreign real estate void as direct tax.
- 6. As to being a general or special tax.
- 7. Not a poll tax.
- 8. As to being equal and uniform.
- 9. Double taxation.
- 10. Not a taking of private property.
- 11. Need not state the object of tax.
- 12. As to notice and hearing.
- 13. Due process of law not violated.
- 14. As to being retro-active and *ex post facto*.
- 15. Not a tax upon exports or commerce.
- 16. Conflicting with treaties and alien rights.
- 17. Government bonds and State securities.
- 18. Legatee's or owner's domicile as to personal property and its situs.
- 19. General questions as to State jurisdiction.

§ 1. *General power of State over taxation.*—In all matters appertaining to the domain of taxation, as to the subject matter of the tax, persons, method of valuation and the like, there can be no doubt that, as a general rule, the power of the several States is practically unlimited within their several jurisdictions, except where restricted or controlled by their constitutions or by the constitution and laws of the United States, and it is said that, in the exercise of this function, the Legislature possesses full, absolute

and sovereign power. Where the power of the State has not been thus interdicted, controlled or surrendered to the general government, its exercise rests in the sound discretion of the law making body.<sup>1</sup>

§ 2. *Collateral or inheritance tax is upon the privilege of succession to property.*—With these well settled principles in view, we will now consider briefly the various constitutional objections that have been frequently urged in the State and Federal courts against statutes imposing legacy and succession taxes, and it may be asserted that these objections have all finally tended to settle, first, the precise nature of the tax, as imposed by such laws; secondly, the power of the several States and of the general government, within the well known restrictions above named, to enact laws imposing the same.

It is now an established doctrine, that so far as the nature of the tax is concerned, such taxes are nothing more than a burden, bonus or assessment, as they have been variously defined, imposed by Government upon the passing, devolution, transmission or privilege of taking or receiving property under wills and intestate laws, whether such property passes to collateral or lineal heirs, and to prevent a fraudulent or intentional evasion of the tax, provisions have, in nearly all the statutes, also been inserted, making the tax applicable to all transfers

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<sup>1</sup> Cooley on Taxation, 2d ed. 5-7; McCulloch v. Maryland, 4 Wheat. 316; Kirtland v. Hotchkiss, 100 U. S. 491; Eyre v. Jacob, 1858, 14 Grat. 426; Matter of McPherson, 1887, 104 N. Y. 316; Railroad Company v. Penn. 1872, 15 Wall. 300, 319; Com's. App. (Bittinger's Est.), 129 Pa. St. 338.

made *inter vivos* intended to take effect at, upon or after the death of the transferrer.

The right to impose these taxes is based upon the broad, constitutional power of the State, as a sovereign, to modify, amend, extend or wholly to repeal the laws governing the transmission of property by will and intestate laws. Such laws confer, at the utmost, a mere privilege upon the heirs or other representatives of the decedent of succeeding to the estate, and the Legislature has the constitutional power to tax the privilege conferred, as it has the right to tax any other privileges within its jurisdiction.<sup>1</sup>

These principles will be found to be fully substantiated in the cases referred to in the notes.<sup>2</sup>

It will also be observed that the various statutory<sup>3</sup> provisions define the tax in substantially the same manner as that given above.

In one of the earliest cases decided in Virginia,<sup>4</sup> the rule above stated was announced and has ever since

<sup>1</sup> See Chapter I, sec. 2.

<sup>2</sup> *Eyre v. Jacob*, 1858, 14 Grat. 427; *Miller v. Com.* 1876, 27 Grat. 110; *Tyson v. State*, 1868, 28 Md. 577; *State v. Dalrymple*, 1889, 70 Md. 294; 17 Atl. Rep. 82; *Matter of McPherson*, 1887, 104 N. Y. 306; *Mager v. Grima*, 1850, 8 How. U. S. 490; *Scholey v. Rew*, 1874, 23 Wall. 331; *Strode v. Com.* 1866, 52 Penn. St. 181; *Clymer v. Same*, Id. 189; *Com. v. Herman*, 1885, 16 Wkly. N. C. 210; *Wallace v. Myers*, 1889, 38 Fed. Rep. 184; *Pullen v. Commissioners*, 1872, 66 N. C. 361. See, also, *Matter of Howard*, 1887, 5 Dem. 483; *Williams' Case*, 1827, 3 Bland Chanc. Rep. 186. *In re Short's Est.* 1851, 16 Penn. St. 63; *Carpenter v. Penn.* 1854, 17 How. 456; *Peters v. Lynchburg*, 1882, 76 Va. 927; *Schoolfield v. Same*, 1884, 78 Id. 366; *Arnaud v. Holland*, 3 La. 337.

<sup>3</sup> See Statutes N. Y., Penn., Md. and Conn., Appendix.

<sup>4</sup> *Eyre v. Jacob*, 14 Grat. 427.

been followed. Judge Lee<sup>1</sup> said : " The intention of the Legislature was plainly to tax the transmission of property by devise or descent to collateral kindred; to require that a party thus taking the benefit of a civil right secured to him under the law should pay a certain premium for its enjoyment, and as it was thought just and reasonable that the amount of the premium should bear a certain proportion to the value of the subject enjoyed, it is fixed at a certain per centum upon the value of the whole estate transmitted. . . . The right to take property by devise or descent is the creature of the law, and secured and protected by its authority. The Legislature might, if it saw proper, restrict the succession to a decedent's estate, either by will or descent, to a particular class of his kindred, say to his lineal descendants and ascendants; it might impose terms and conditions upon which collateral relatives may be permitted to take it, or may to-morrow, if it pleases, absolutely repeal the statute of wills and that of descents and distribution, and declare that upon the death of a party his property shall be applied to the payment of his debts, and the residue appropriated to public uses. Possessing this sweeping power over the whole subject, it is difficult to see upon what ground its right to appropriate a modicum of the estate, call it a tax or what you will, as the condition upon which those who take the estate shall be permitted to enjoy it can be successfully questioned. That the tax is confined to collateral inheritances and devises to others than those specified presents no difficulty. It is the will of the Legislature to make this discrimination, and its discretion upon the subject must

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<sup>1</sup> Pages 428-430.

be regarded as having been duly and properly exercised."

So when the question came before the Supreme Court of the United States, in a case involving an alleged conflict with a treaty, Taney, C. J.,<sup>1</sup> considered the law to be nothing more than the exercise of the power possessed by every State of regulating the manner and terms upon which property, real and personal, within its domain may be transmitted by will or inheritance, and of prescribing who shall and who shall not be capable of taking it.

And, in Pennsylvania, when the constitutional question finally came before the Supreme Court of the State in 1866,<sup>2</sup> it received elaborate consideration, and was sustained upon precisely the same grounds as those advanced in *Eyre v. Jacob*.<sup>3</sup>

The court adopted the opinion of Butler, C. J., in the court below. He said: "The estate does not belong to them (collaterals, etc.), except as a right to it is conferred by the State. Independent of the Government, no such right could exist. The death of the owner of property would necessarily terminate his control over it, and it would pass to the first who might obtain possession. The right of the owner to transfer it to another after death or of kindred to succeed is the result of municipal regulation, and must, consequently, be enjoyed subject to such conditions as the State sees fit to impose."<sup>4</sup>

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<sup>1</sup> *Mager v. Grima*, 8 Howard, 490.

<sup>2</sup> *Strode v. Com.*; *Clymer v. Same*, 52 Penn. St. 181-189. See, also, *In re Short's Est.* 4 Harris, 63; *Com. v. Herman*, 16 W. N. C. 212.

<sup>3</sup> *Supra*.

<sup>4</sup> Citing Black. Comm. Book 2, pages 10-13.



Chapman, J., in the same case, considered that as the Legislature had the power to regulate the laws of descent and inheritance, it had also the right, as a condition, of making itself a kind of beneficiary without consideration, and to claim a share of the property whether exacted as a tax or duty.

Inasmuch as it is lawful for the State to abolish altogether the privilege of acquiring property within its dominion, by will or inheritance, it is lawful for the Legislature to annex any conditions to the privilege which may seem expedient and do not conflict with the organic law of the State or with the constitution or laws of the United States.<sup>1</sup>

§ 3. *Not a property tax.*—In accordance with the views given above, it has been uniformly held that the tax is not a property tax within the meaning of the various provisions of the Federal and State constitutions.<sup>2</sup>

It was said by Lee, J.,<sup>3</sup> "The property tax, which the framers of the constitution were contemplating, . . . was the ordinary annually recurring tax for the support of government laid upon all property whatsoever. They had no reference to casual subjects of taxation occurring irregularly and occasionally which, though connected with property, were yet readily to be distinguished in their essential character and features."

And in a recent case in New York, where the constitutionality of the act was in question, the same

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<sup>1</sup> Wallace v. Myers, 38 Fed. Rep. 184.

<sup>2</sup> See cases, Sec. 2, p. 20, *supra*.

<sup>3</sup> Eyre v. Jacob, *supra*. And see Matter of McPherson, 104 N. Y. 306; Com. v. Maury, 82 Va. 883.

views were announced, and a majority of the court went so far as to hold that it was not important to determine whether the act was to be regarded as imposing a tax on property or upon the succession or devolution of property by will or intestacy, whether one or the other it was held constitutional in all respects.<sup>1</sup>

In another case in North Carolina, the court seem to have reached the conclusion that the tax was not a property tax, but one upon the succession to property, without being aware of any previous authority upon the question.<sup>2</sup>

§ 4. *Not a direct tax.*—Nor is it a direct tax upon land taken by descent within the meaning of the Federal constitution, but it is more in the nature of an impost or excise upon the devolution of the estate or the right to become beneficially entitled thereto, or to the income thereof.<sup>3</sup>

§ 5. *Taxing foreign real estate void as direct tax.*—But as real estate is not drawn to the person or domicile of the owner for taxation, it cannot be taxed by these laws outside the jurisdiction where it is situated. Such a tax is a direct tax upon the thing devised in the hands of the devisee, and it is a tax which the State is powerless to enforce, hence the collateral inheritance law of Pennsylvania, passed in 1887, which sought to tax real estate situated in

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<sup>1</sup> Matter of McPherson, 104 N. Y. 306; Wallace v. Myers, 38 Fed. Rep. 184. See, also, Matter of Howard, 5 Dem. 483.

<sup>2</sup> Pullen v. Commissioners, 1872, 66 N. C. 363.

<sup>3</sup> Scholey v. Rew, 1874, 23 Wall. 331; see, also, Strode v. Com. *supra*; Com. v. Herman, 16 W. N. C. 212.

Maryland, was, *pro tanto*, held unconstitutional, or, at least, incapable of enforcement.<sup>1</sup>

In Commonwealth's Appeal,<sup>2</sup> Paxson, J., said: "While it is conceded that the powers of the State for taxing purposes are very great, they are necessarily limited to either property or persons within her borders. All property of the citizen within the State may be taxed, and all such property outside the State as is drawn to or follows in law the person or domicile of the owner, such as bonds and mortgages, moneys at interest, etc., no matter where situate." . . . "It may be that the State might impose a succession tax upon every citizen of the State who succeeds to either real or personal property from whatever source derived. This is not such a tax. . . . It is a direct tax upon the thing devised in the hands of the devisee, a tax which the State is powerless to enforce."<sup>3</sup>

This rule does not, however, apply where land outside of the taxing State is directed by will to be converted into personalty; it is then deemed personalty, and is subject to the tax law of the owner's domicile.<sup>4</sup>

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<sup>1</sup> Com's. App. (Bittinger's Est.), 1889, 129 Pa. St. 338; 24 W. N. C. 273; s. c. 18 Atl. 132; distinguishing Com. v. Smith, 5 Penn. St. 142. The court declined to pass upon the constitutional question raised by the title of the act. See Del Busto's Est. 23 W. N. C. 111. See, also, Com. v. Coleman, 52 Penn. St. 468; Kintzing v. Hutchinson, U. S. C. Ct. 1877, 34 Leg. Int. 365; Drayton's App. 61 Penn. St. 172; Miller v. Com. 111 Penn. St. 321; Hood's Est. 21 Id. 106; Matter of Wolfe, 19 N. Y. St. Rep. 263.

<sup>2</sup> *Supra*.

<sup>3</sup> But see Matter of Howard, 5 Dem. 483; Matter of McPherson, 104 N. Y. 306.

<sup>4</sup> Miller v. Com. 1885, 111 Penn. St. 321; Matter of Howard, 5 Dem. 486, and cases cited, Chapter IV, secs. 3, 4.

§ 6. *As to being a general or special tax law.*—It has been held to be a general and not a special law, and thus constitutional as such within the law of Maryland,<sup>1</sup> while in New York, and some other States, it has been held to be a special tax, but valid as such.<sup>2</sup>

§ 7. *Not a poll tax.*—It is not within the constitutional prohibition against levying a poll tax, exempting paupers, etc.<sup>3</sup>

§ 8. *As to being an equal and uniform tax.*—Nor does a law imposing such tax conflict with a general constitutional requirement that all taxes shall be equal and uniform within the State.<sup>4</sup>

The terms equal and uniform apply only to a direct tax on property, and do not limit the power of the Legislature as to the object of tax. They are intended to prevent an arbitrary tax on property according to kind or quality without regard to value.<sup>5</sup>

While providing for a uniform mode of taxation on property it was not the purpose of the constitution to prohibit any other species of tax, but to leave the

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<sup>1</sup> *Montague v. State*, 1880, 54 Md. 482.

<sup>2</sup> *Matter of McPherson*, 1887, 104 N. Y. 306; *Matter of Enston*, 113 N. Y. 178. See *Eyre v. Jacob*, 14 Grat. 436; *Tyson v. State*, 1868, 28 Md. 577; *State v. Dalrymple*, 70 Id. 294; 17 Atl. 82.

<sup>3</sup> *Tyson v. State*, 28 Md. 577.

<sup>4</sup> *Eyre v. Jacob*, 1858, 14 Grat. 427; *Tyson v. State*, 28 Md. 577; *Pullen v. Commissioners*, 1872, 66 N. C. 361; *Peters v. Lynchburg*, 1882, 76 Va. 927; *Schoolfield v. Same*, 1884, 78 Va. 367.

<sup>5</sup> *Id.*, decisions, *supra*.

Legislature the power to impose such other taxes as the interests of the Government might require.<sup>1</sup>

§ 9. *Double taxation*.—There is nothing in the Federal constitution that forbids double or unequal taxation by a State,<sup>2</sup> hence, the privilege under these laws may be taxed, although the property is also taxed;<sup>3</sup> and it makes no difference that the same tax is imposed upon the succession in another State.<sup>4</sup>

§ 10. *Not a taking of private property, etc.*—Nor is it a taking of private property without compensation.<sup>5</sup>

§ 11. *Need not state object of tax*.—It is not necessary that the act should state the object of the tax, or to what purpose it is to be applied, under the New York constitution, as that provision was only intended to apply to the annually recurring taxes known at the time of the constitution's adoption.<sup>6</sup>

<sup>1</sup> *Tyson v. State*, 28 Md. 577; *State v. Dalrymple*, *supra*. A statute of Minn. requiring, as a condition precedent to probate proceedings for the settlement of estates, the payment to the County Treasurer of specified sums arbitrarily prescribed with reference to the value of the estate, Held unconstitutional, being contrary to the requirement of equality of taxation and the dispensation of justice freely and without purchase. *State v. Gorman*, 41 N. W. Rep. 948; *contra*, *Bradford v. Jones*, 1 Md. 368; *Harrison v. Willis*, 7 Heisk. 35.

<sup>2</sup> *Davidson v. N. O.* 96 U. S. 97-106. See *Matter of Enston*, 113 N. Y. 182.

<sup>3</sup> *Eyre v. Jacob*, 14 Grat. 427.

<sup>4</sup> See *Com. v. Sharpless*, 2 Chest. Pa. 246; *Com. v. Schumacher*, 9 L. Bar. Pa. 199; but see *Matter of Enston*, 113 N. Y. 182, 183.

<sup>5</sup> *Strode v. Com.* 1866, 52 Penn. St. 186.

<sup>6</sup> *Matter of McPherson*, 104 N. Y. 306; s. p. *Eyre v. Jacob*, 14 Grat. 427.

§ 12. *As to notice and hearing.*—But parties against whom it is sought to assess the tax have a constitutional right to notice, and to an opportunity for a hearing upon the assessment. It would seem that all the statutes upon this subject sufficiently provide for such notice and hearing so as to obviate any constitutional objection, either under the State or under the fourteenth amendment to the Federal Constitution.<sup>1</sup>

§ 13. *Due process of law not violated.*—Nor do these statutes violate the provision of the constitution as to due process of law.<sup>2</sup>

§ 14. *As to being retro-active and ex post facto.*—In Maryland an interesting question<sup>3</sup> arose as to the constitutional effect of a statute of that State releasing the rights of the State to claims for the tax against husbands, who, under a previous law, had been made liable, where such claims had not been actually paid. It was contended by the State that the act was retro-active and unconstitutional as against the State, as violating the rule of equality between those husbands who had actually paid the tax before the repealing law was passed, and those who had refused and thus obtained its benefits.

But the Court said: "If the legislature is satis-

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<sup>1</sup> Cooley on Taxation, 2d ed. 362, 363; Matter of McPherson, 104 N. Y. 306; 21 Am. Law Rev. 464-466; Wallace v. Myers, 38 Fed. Rep. 184; citing Railroad Company v. Richmond, 96 U. S. 521; Barbier v. Connolly, 113 U. S. 27; Wurts v. Hoagland, 114 U. S. 606; Ky. Railroad Tax Cases, 115 Id. 321.

<sup>2</sup> Matter of McPherson, *supra*.

<sup>3</sup> Montague v. State, 54 Md. 486.

fied that a given tax is no longer necessary; that it is unjust; that a change of circumstances requires its repeal; that public policy demands that the repeal shall be prompt, should give instant relief, and should therefore extend to all who have not yet actually paid, the legislature has, in its discretion, the constitutional right so to enact, without being at the same time compelled to embarrass the treasury by a sweeping restriction to all who had paid the tax from the time of its imposition. Under some circumstances such a retrospective exemption might be highly expedient, and under others not. The question is of policy, and not of law for the courts.<sup>1</sup>

In Pennsylvania an amendatory statute of 1850 (amending Act 1826) provided that the estates of persons domiciled there who died before the passage of the Act of 1850, "shall be so construed as to relate to all persons who have been at the time of their decease or now may be domiciled within this commonwealth, as well as to estates." It was held that the act was retro-active, but constitutional as to estates within the State, and that under it stocks and moneys held abroad were liable to the tax, to be paid out of the assets in the hands of the executors.<sup>2</sup>

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<sup>1</sup> *Montague v. State*, 54 Md. 486. Many retrospective exemptions have been made in New York, particularly as regards adopted children, and those standing in the so-called relation of parent and child (Law 1885, ch. 483, sec. 1; L. 1887, ch. 713; L. 1889, ch. 479; see Chapter III, "Exemptions").

<sup>2</sup> *In re Short's Estate*, 1851, 16 Penn. St. 63; *Carpenter v. Penn.* 17 How. 456; *Com. v. Smith*, 5 Penn. St. 143. See, also, *Alexander's App.* 3 Penn. Law Jour. Rep. 87; *In re Ewing*, 1 Crompt. & J. 158; *Orcutt's Appeal*, 97 Penn. St. 184. But see *Pullen v. Com.* 1872, 66 N. C. 361.

In Short's case<sup>1</sup> the court said: "The argument has been that we ought not to give the act a retro-active effect unless we are forced to do so by the stringency of the words. The principle is a sound one where retro-action would work an injustice, . . . but certainly no injustice is done by increasing a tax to meet an increase of the public burden."

Short's estate subsequently came before the Supreme Court of the United States.<sup>2</sup> It appeared that decedent was a citizen of the State, had died in 1849, and his resident executor claimed that certain bonds not within the State, and legacies to foreigners, were not taxable, and that the Act of 1850 was retro-active, upon the ground that the rights of the legatees *vested at decedent's death*; it was also urged that the law was *ex post facto*. The latter contention the court overruled, with the observation that it only applied to criminal cases. In passing upon the other objection the court said (p. 462): "Until the period for distribution arrives, the law of the decedent's domicile attaches to the property, and all other jurisdictions refer to the place of domicile as that where the distribution should be made. The will of the testator is proven there, and his executor receives his authority to collect the property by the recognition of the legal tribunals of that place. . . . The rights of the donee are subordinate to the conditions, formalities and administrative control prescribed by the State in the interest of its public order, and are only irrevocably established upon its abdication of this control *at the period of distribution*. If

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<sup>1</sup> *Supra*.

<sup>2</sup> *Sub nom.* Carpenter v. Penn. 1854, 17 Howard. 456.



the State, *during this period of administration and control* by its tribunals and their appointees, thinks fit to impose a tax upon the property, there is no obstacle in the Constitution and laws of the United States to prevent it."<sup>1</sup> Thus there is nothing to prevent the State from taxing estates undistributed, even if the act is passed subsequently to date of death. This is the English rule.<sup>2</sup>

In a recent case in Pennsylvania, however, the court seemed inclined to doubt whether, if the Collateral Act of 1887—consolidating the law of that State—assumed to tax any other or different estates than those provided for in previous statutes, it would be constitutional; but the objection seems only to have referred to a requirement of the Constitution that the title of the act should clearly indicate the subject-matter of the bill.<sup>3</sup>

§ 15. *Not a tax upon exports or commerce.*—These statutes have also been before the Federal Supreme Court, upon the claim that a statute of Louisiana taxing foreign legatees violated the rights of aliens under treaty between the Federal Government and foreign powers, and conflicted with the Constitution, but it was held that the power of

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<sup>1</sup> Citing *Ennis v. Smith*, 14 How. 400; *In re Ewing*, 1 C. & J. 151; *Atty.-Genl. v. Napier*, 6 Ex. Ch. 217; *Lawrence v. Kitteredge*, 21 Conn. 577; 1 Barb. Ch. 180.

<sup>2</sup> See cases *supra*, and *Atty.-Genl. v. Middleton*, 3 H. & N. 125; *Cooley on Taxation*, 2d ed. 376; Chapter I, p. 9.

<sup>3</sup> *Com's. App. (Cooper's Est.)*, 127 Pa. St. 441; *affg.* 5 Penn. C. R. 271; *Com's. App. (Billinger's Est.)*, 1889, 129 Pa. St. 338; 18 Atl. 132. See Sec. 5, *supra*.

the State to impose such a tax upon foreign legatees was similar to that which the State exercised in taxing its own citizens: that the State, in allowing aliens to inherit, conferred a privilege which it could tax or withdraw totally, and that aliens were not entitled to exemption under the Constitution<sup>1</sup> as being a tax upon commerce or exports.<sup>2</sup>

§ 16. *Conflicting with treaties and alien rights.*—The Louisiana statute also came before the Supreme Court in 1856,<sup>3</sup> when it was contended that it conflicted with the treaty of France made in 1853, which stipulated against the imposition of inheritance taxes, but as the decedent died in 1848 the court held that the treaty could not divest rights accruing before it went into effect, and it was doubted, under the express terms of the treaty, whether the Federal Government could control the succession laws of the State in the absence of an act of the State repealing the law and accepting the provisions of the treaty.<sup>4</sup>

Where the State law conflicts with a treaty between the Federal Government and a foreign power, it is held that such law becomes *pro tanto* inoperative as against citizens of such foreign power, and the treaty being the supreme law of the land, and retro-active as well as prospective, the fact that the law existed

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<sup>1</sup> Sections 8-10 of Article I.

<sup>2</sup> *Mager v. Grima*, 1850, 8 Howard, 490; affg. 12 R. (La.) 584. See *Arnaud v. Holland*, 3 La. 337-560, and *Dallinger v. Rapello*, 14 Fed. Rep. 33.

<sup>3</sup> *Prevost v. Greneaux*, 19 Howard, 1; affg. 12 A. (La.) 577.

<sup>4</sup> See, also, *Fredarickson v. Louisiana*, 1859, 23 How. 445; *Succession of Schaffer*, 13 A. (La.) 113.

before the treaty went into effect would make no difference.<sup>1</sup>

§ 17. *Government bonds and State securities.*—Perhaps one of the best illustrations of the exact nature of this tax as being one that is imposed upon the privilege of succeeding to property and not upon the property *per se*, which is merely used as a medium for ascertaining the value so as to fix the amount of the tax,<sup>2</sup> is that of government bonds and State stocks or securities declared by general laws to be exempt from all taxation. These securities have been, nevertheless, subjected to the collateral inheritance tax.<sup>3</sup>

One of the earliest cases upon this subject is that of *Strode v. Com.*,<sup>4</sup> where the State sought to collect a collateral tax upon an estate a part of which was composed of government bonds devised to collaterals, and the right of the State to collect the tax upon the value of these bonds was upheld upon the familiar grounds stated above and within the ruling of the

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<sup>1</sup> Succession of Dufour, 10 A. (La.) 391; Succession of Amat, 18 A. (La.) 403; Succession of Crassius, 19 Id. 369; Hanenstein v. Lynham, 100 U. S. 483; Cooley on Taxation, 2d ed. 100.

<sup>2</sup> Wallace v. Myers, 38 Fed. Rep. 184.

<sup>3</sup> The statute of West Virginia, L. 1887, ch. 31, p. 111, expressly taxes all public securities for money of every kind; also that of Maryland; Appendix, sec. 1. The United States Supreme Court has frequently held that a State statute imposing a tax upon bank capital invested in United States bonds is unconstitutional, but it seems these were cases of a property tax purely, and have no application to a tax of this character. *Bank of Commerce v. Comm's.* 2 Black. 620; *Bank Tax Cases*, 2 Wall. 200; *Banks v. The Mayor*, 7 Wall. 16.

<sup>4</sup> 52 Penn. St. 181; *Clymer v. Same*, Id. 189.

Federal Courts.<sup>1</sup> Chapman, P. J., said,<sup>2</sup> "But the view entertained by the court is, that no Act of Congress impinges upon the collateral inheritance law. This law contemplates the imposition of no tax such as Congress intended to prohibit. It is called a tax or duty, but has little or no analogy to a tax in the usual acceptation of the term. It cannot be regarded as a penalty exactly,<sup>3</sup> but it approximates that as nearly as it does an ordinary tax." Woodward, C. J.,<sup>4</sup> in giving the opinion of the Supreme Court, said: "Neither the prohibitory clause of the Act of Congress of 1862, nor any of the principles of decision against State authority to tax that which Federal authority has exempted from taxation, have any application here. The Federal Government has not prohibited the State from prescribing rules of inheritance and succession to estates of decedents, and it would be a grievous mistake of legislative and judicial authority to apply it with such effect."

Upon the same principle, the tax was held rightfully imposed upon a collateral who was a devisee of certificates issued by the State of Pennsylvania for a State loan which were declared by the law under which they were issued to be exempt from State, municipal or local taxation;<sup>5</sup> and in a recent case in New York the law of that State was upheld by the

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<sup>1</sup> Citing *McCulloch v. Md.* 4 Wheat. 316.

<sup>2</sup> Page 186.

<sup>3</sup> It is not a penalty or forfeiture. *Arnaud v. Holland*, 3 La. 337; *Matter of Vanderbilt*, N. Y. Law Jour. April 22, 1890.

<sup>4</sup> Page 189.

<sup>5</sup> *Com. v. Herman*, 1885, 16 Wkly. N. C. 210.

United States Circuit Court, where the State sought to assess taxes upon government bonds passing to collaterals under a decedent's will.<sup>1</sup>

In the Wallace case (*supra*) it was contended that the fact that the tax was assessed upon the value of the bonds showed that it was a property tax and that it was therefore void.<sup>2</sup> The Circuit Court said: "The circumstances that incidentally under such a statute such bonds may have to be valued in order to ascertain the amount of the tax does not affect its essential nature as one upon the privilege and not upon the bonds. . . . Such a tax is no more upon the bonds than an income tax is one upon the property out of which the income is derived or an excise tax is one upon the articles manufactured or sold. The bonds are the subject of the appraisal, but *the privilege is the subject of the tax.*"<sup>3</sup>

§ 18. *Legatee's or owner's domicile as to personal property and its situs.*—Under this, one of the most important branches of the collateral tax law, questions that are beset with difficulty constantly arise. As the majority of these questions do not, however, strictly involve constitutional or jurisdictional points, their discussion and treatment, with one or two exceptions, has been deemed more appropriate under

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<sup>1</sup> Wallace v. Myers, 1889, 38 Fed. Rep. 184; citing Mager v. Grima, 8 How. 490; Carpenter v. Penn. 17 Id. 456. See, also, Matter of Howard, 1887, 5 Dem. 483.

<sup>2</sup> See Pullen v. Commissioners, 1872, 66 N. C. 363, where a like objection was overruled.

<sup>3</sup> Citing Society for Savings v. Coits, 6 Wall. 594; Hamilton Co. v. Mass. 6 Id. 632; People v. Insurance Company, 92 N. Y. 328, *aff'd* 119 U. S. 129.

the general topic of domicile and *situs* discussed in another chapter,<sup>1</sup> and it remains here merely to consider the propositions of law which have been determined with respect to such questions of domicile and *situs* arising under the various constitutional provisions, Federal and State.

These adjudications seem to have resolved themselves into several propositions:

(1.) Under the maxim "*Mobilia sequuntur personam*," it seems to be generally conceded that the State of the decedent's domicile has the power of imposing a succession, legacy or inheritance tax upon the personal property of such decedent, whether situate there or in a foreign country (and perhaps upon the real estate in a foreign State), and whether bequeathed to resident or alien legatees.<sup>2</sup>

There can be no doubt that the legislature has the power to impose the tax not only where it affects citizens of the State, but also where non-residents or aliens claim by inheritance or by will property located there. Every State in the Union, in the absence of a constitutional prohibition, has the authority to regulate by law the devolution and distribution of an intestate's property situated within the jurisdiction of that State, and personal property situated elsewhere

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<sup>1</sup> See Chapter IV.

<sup>2</sup> Chapter IV, sec. 3; *Tyson v. State*, 28 Md. 577; *Mager v. Grima*, 8 Howard, 490; *Eyre v. Jacob*, 14 Grat. 422; *State v. Dalrymple*, 70 Md. 294; 17 Atl. 82; *In re Short's Estate*, 16 Penn. St. 63; *Com. v. Smith*, 5 Id. 143; *Alexander's Appeal*, 3 P. L. J. (Clark), 87; *U. S. v. Hunnewell*, 13 Fed. Rep. 617; *In re Ewing*, 1 Crompt. & J. 151-158; *Com's. App. (Bittinger's Est.)*, 129 Pa. St. 338; 18 Atl. 132.

but owned by a resident, and to prescribe who shall take and who shall not be capable of taking it.<sup>1</sup>

(2.) It has been held, under the law of Maryland, that tangible personal property, *i. e.*, bonds and securities that are situate in the taxing State are liable to the succession and legacy tax, although the decedent was not domiciled there but died in another State of which he was a citizen, and where his will was probated and in which his collateral legatees resided, and left neither debts nor collateral legatees in such taxing State.<sup>2</sup>

The same power exists in Parliament, but the intention to tax the personal property of such non-residents must be clearly expressed.<sup>3</sup> Under this doctrine they are exempted under the legacy act, and to some extent taxed under the succession act.

Where a non-resident is owner of tangible property within the State, and the State imposes a tax upon it, the tax is not a charge against the owner personally, but must be enforced against the property itself. The State has no jurisdiction to assess such a tax against the owner personally.<sup>4</sup>

(3.) That as to real estate situate beyond the

<sup>1</sup> State v. Dalrymple, and cases, *supra*.

<sup>2</sup> State v. Dalrymple, *supra*. Such would also now seem to be the law of New York as to both foreign testates and intestates, where there is property within the State. Matter of Enston, 113 N. Y. 183; Matter of Vinot, 7 N. Y. Supp. 517; Matter of Lawr. G. Clark, 9 Id. 444; Matter of Romaine, N. Y. Law Jour. March 19, 1890. See Chapter IV, sec. 4 (b).

<sup>3</sup> Per Cranworth, Lord Chan., Wallace v. Atty.-Genl. L. R. 1 Ch. App. 1. See Chapter IV, sec. 4 (a).

<sup>4</sup> Cooley on Taxation, 2d ed. 21, citing Peo. v. Supervisors, 11 N. Y. 563; see Hilton v. Fonda, 86 Id. 339.

jurisdiction of the State, where the owner was domiciled at the time of his death, it is beyond the constitutional power of such State to tax the same by any direct tax.<sup>1</sup>

Accordingly it has been held that the statute of Pennsylvania, passed in 1887,<sup>2</sup> which attempted to impose a tax and to make it a lien upon real estate situate in the State of Maryland was, so far as the real estate was concerned, a direct tax thereon and beyond the jurisdiction of the State, and the statute was held, *pro tanto*, unconstitutional.<sup>3</sup> The court conceded, however, that the State might impose a succession tax upon such foreign real estate where it belonged to a citizen, but not a direct tax.

(4.) But where real estate situate in a foreign country or State, and thus beyond the jurisdiction of the owner's domicile, be directed by will to be converted into personalty, the tax may be imposed, as there is then an equitable conversion, and the tax is in reality only imposed upon the proceeds of the real estate.<sup>4</sup>

§ 19. *General questions as to State jurisdiction.*—  
Surrogates' courts are constitutionally empowered to determine the tax, as it is simply an incident in the

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<sup>1</sup> Com's. App. (Bittinger's Est.), 1889, *supra*; 24 W. N. C. 273; s. c. 18 Atl. Rep. 132, distinguishing Commonwealth v. Smith, 5 Penn. St. 142; see, also, Kintzing v. Hutchison, 34 Leg. Int. 365. and cases cited, *supra*, sec. 5.

<sup>2</sup> P. L. 1887, 79; Appendix.

<sup>3</sup> Com's. App. (Bittinger's Est.), *supra*.

<sup>4</sup> Miller v. Commonwealth, 1886, 111 Penn. St. 321; Matter of Howard, 5 Dem. 483, and cases cited Chapter IV. See, also, *supra*, sec 5.



settlement of the estate of deceased persons.<sup>1</sup> And the power to impose a succession tax may be delegated by the legislature to counties and municipal corporations, though it should be plainly and unmistakably conferred, and the law will be strictly construed.<sup>2</sup>

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<sup>1</sup> *Matter of McPherson*, 1887, 104 N. Y. 306; *Wallace v. Myers*, 38 Fed. Rep. 184.

<sup>2</sup> *Peters v. Lynchburg*, 76 Va. 927; *Schoolfield v. Lynchburg*, 78 Id. 366. Constitutional rule considered with reference to valuation of life-estates, see *Williams' Case*, 3 Bland Ch. 186.

## CHAPTER III.

### EXEMPTIONS.<sup>1</sup>

- § 1. Taxation the general rule.
- 2. Policy of Inheritance and Succession Tax Laws.
- 3. Statutory exemptions enumerated.
  - (a) New York.
  - (b) Pennsylvania.
  - (c) Maryland.
  - (d) Virginia.
  - (e) West Virginia.
  - (f) Delaware.
  - (g) Connecticut.
  - (h) North Carolina.
- 4. Charitable, religious and other corporations and objects.
- 5. Foreign corporations.
- 6. Adopted and illegitimate children, etc.
- 7. Widows, and husbands of deceased daughters.
- 8. Next of kin, lineal and lawful descendants.
- 9. Aliens, foreign legatees and non-residents.
- 10. What estates taxable.—Legacies under \$500.
- 11. Foreign real estate.
- 12. Legacies when exempt under acts of Congress.

§ 1. *Taxation the general rule.*—As taxation is held to be the general rule extending to all species of property, so exemption is the exception to such rule, with the further important qualification that statutes purporting to grant exemption from general taxation

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<sup>1</sup> See, also, Chapter IV as to resident and non-resident decedents; Chapter VI as to constructive exemptions, remainders, trusts, powers and legacies.

are to be strictly construed against the claim.<sup>1</sup> Such exemptions are neither presumed nor allowed unless there appears from the language of the statute or charter to be a clear intention, on the part of the Legislature, to make an exception to the general rule,<sup>2</sup> and where the law is doubtful the court should declare against the exemption.<sup>3</sup>

Special tax laws, however, are to be construed most strictly against the government and most favorably to the taxpayer,<sup>4</sup> and a citizen cannot be subjected to such special burdens without clear warrant of law.<sup>5</sup>

§ 2. *Policy of inheritance and succession tax laws.*

—As has already been observed in the first chapter, it has been the policy of these laws from the earliest times to make exemptions. Those that were allowed, however, were strictly confined, for the most part, to gifts to the near relatives of the decedent, and to the poor. Charitable institutions do not seem, originally, to have been so generally favored. This rule has

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<sup>1</sup> Cooley on Taxation, 2d ed. 205; Tucker v. Ferguson, 22 Wall. 527; People v. Long Island City, 76 N. Y. 20; Assn. Colored Orphans v. Mayor, 104 Id. 587.

<sup>2</sup> Cooley on Taxation, 2d ed. 204, and cases cited; People v. Roper, 35 N. Y. 629; People v. Davenport, 91 Id. 574; Wilson v. Gaines, 103 U. S. 421.

<sup>3</sup> Roosevelt Hosp. v. Mayor, 84 N. Y. 108; People v. Collison, 22 Abb. N. C. 54; Louisville, &c. v. Gaines, 2 Flipp, 621; and see Fox v. Com. 16 Grat. 1.

<sup>4</sup> Dwarris Statutes, 742-749; Gurr v. Scudds, 11 Exch. 190; U. S. v. Wigglesworth, 2 Story, 369; U. S. v. Watts, 1 Bond, 580; Fox v. Com. *supra*.

<sup>5</sup> Matter of Enston (People v. Sherwood), 113 N. Y. 178, and cases cited.

been, however, widely departed from by most of the American States which have enacted inheritance and succession laws. So, under the English Legacy Duty Act, saving husband and wife, and, subsequently, certain well-defined charitable and religious corporations and institutions,<sup>1</sup> the law makes no exceptions, even to the nearest blood relations. As to the latter, however, in pursuance of the principle of graduation, the tax is made proportionately smaller than that which is imposed upon strangers and collaterals. So the laws imposing a succession tax, passed by Congress during the Rebellion, following the English statute, imposed the duty uniformly upon all who took by inheritance or intestacy. The Legacy Act, however, excepted husband and wife.<sup>2</sup>

But under the State laws exemptions have been generally extended so as to embrace not only near relatives and lineal descendants, but many collateral heirs and charitable corporations. And the policy seems also to be to relieve all estates or shares if under a certain fixed sum, the maximum amount exempted being about \$1,000.

In New York and Connecticut exemptions under the collateral inheritance laws have been carried to an extreme limit,<sup>3</sup> and, it seems, beyond the true idea and scope of a collateral tax law. The statutes of these States except not only all lineal descendants born in lawful wedlock—which is the true limit of a

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<sup>1</sup> 56 Geo. III, ch. 56; 5 and 6 Vict. ch. 82.

<sup>2</sup> U. S. Rev. Stat. 2d ed. (1878), secs. 3438, 3439.

<sup>3</sup> This is especially so in the former State as regards charitable, religious, tract, literary and other corporations, for sweeping exemption has recently been granted them by L. 1890, ch. 553. See Appendix.

collateral tax law, but also certain collaterals and adopted children,<sup>1</sup> and in New York various societies, institutions and corporations that are exempt by law from taxation,<sup>2</sup> while in Connecticut bequests for charitable purposes and for purposes strictly public within the State,<sup>3</sup> and the lineal descendants of adopted children, are also exempted. These several exemptions are, however, expressly made by the acts themselves.<sup>4</sup>

Without discussing the question whether it would not be wiser to adopt a system that would impose the burden equally upon all inheritance and successions over a certain sum, exempting only purely charitable institutions that rely upon gratuitous donations, the object of the present chapter will be best subserved by a brief presentation and review, first, of the several statutory exemptions thus far enacted in this country, and, second, of the decisions rendered under such statutes, and this brings us to

§ 3. *An enumeration of statutory exemptions.*—  
(a) *New York.*—The following are exempt:<sup>5</sup>

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<sup>1</sup> The only pure succession tax laws are those in force in England, and the nearest approach in this country are the laws of Congress, now repealed, and those of Delaware and Maryland.

<sup>2</sup> See L. 1890, *supra*.

<sup>3</sup> Appendix, Laws 1889, secs. 1-17.

<sup>4</sup> Law N. Y. 1885, ch. 483, amended by Law 1887, ch. 713, sec. i; Id. 1889, ch. 479; Id. ch. 307; L. 1890, ch. 553; Pub. Law Conn. 1889, p. 106, secs. 1-17. See Appendix.

<sup>5</sup> See Appendix, L. 1887, ch. 713, sec. 1; L. 1889, *supra*; L. 1890, ch. 553. L. 1885, ch. 483, only applies to property of decedents dying after June 30, 1885, when the Act took effect. *Matter of Howe*, 112 N. Y. 100; *Matter of Thompson*, 14 N. Y. St. Rep. 487; overruling *Matter of Chardavoyne*, 5 Dem. 466.

(1) Father, mother, husband, wife, child, brother, sister.

(2) The wife or widow of a son, or the husband of a daughter, or

(3) Any child or children adopted as such in conformity with the laws of the State, or any person to whom the deceased, for not less than ten years prior to his or her death, stood in the mutually-acknowledged relation of parent.

(4) And any lineal descendant of such decedent born in lawful wedlock, or

(5) The societies, corporations and institutions now exempted by law from taxation, and recently, by law of 1890,<sup>1</sup> the following corporations are exempt: Any religious, educational, bible, missionary, tract, literary, scientific, benevolent or charitable corporation, or corporation organized for the enforcement of laws relating to children or animals, or for hospital, infirmary, or other than business purposes, . . . provided that this provision shall not apply to any monied or stock corporation deriving an income or profit from the (its) capital or otherwise, or to any corporation which has the right to make dividends, or to distribute profits or assets among its members.<sup>2</sup>

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<sup>1</sup> Ch. 553, approved June 7, 1890, entitled, "An Act to amend Chapter 189 of the Laws of 1889, entitled, 'An Act to limit the amount of property to be held by corporations organized for other than business purposes,' and relating to such corporations." It would seem that the institution should be legally incorporated in order to come within the provision. See *Church of St. Monica v. The Mayor*, 119 N. Y. 91. This act is not retro-active. *Est. of Minturn*, N. Y. Law Jour. July 18, 1890; *Sherrill v. Christ Church*, Court of App. Id. July 21, 1890; reversing *Matter of Van Kleeck*, 55 Hun, 472.

<sup>2</sup> See *Matter of Vanderbilt*, 10 N. Y. Supp. 239.

(6) Legacies worth less than \$500.

(7) Bequests to executors in lieu of commissions, etc.<sup>1</sup>

The general laws of New York on taxation, and providing for exemptions therefrom, are contained in the Revised Statutes.<sup>2</sup> The provisions deemed applicable to the exemptions under the collateral tax laws are as follows:

Sec. 1. All lands and all personal estate within this State, whether owned by individuals or by corporations, shall be liable to taxation, subject to the exemptions hereinafter specified. . . .

Sec. 4. The following property shall be exempt from taxation:

1. All property, real or personal, exempted from taxation by the Constitution of this State, or under the Constitution of the United States.

2. All lands belonging to this State or to the United States.

3. Every building erected for the use of a college, incorporated academy, or other seminary of learning, and in actual use for either of such purposes; every building for public worship; every school-house,

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<sup>1</sup> And by Law of 1889, ch. 479, the persons embraced in Class 3 are relieved retrospectively from the tax theretofore imposed under the Act of 1885, ch. 483. The amendatory act, however, only applies to such persons against whom no assessment of the tax had been made at the time it became a law, June 14th, 1889. *Matter of Hughes*, N. Y. Law Jour. July 27, 1889; *Matter of Kemeys*, 29 N. Y. St. Rep. 916; 9 N. Y. Supp. 895. As to constitutionality of retrospective exemptions, see Chapter II, sec.

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<sup>2</sup> Part I, ch. 13, title 1, 2 Banks, 8th ed. p. 1082.

court-house and jail, used for either of such purposes; and the several lots whereon such buildings are situated, and the furniture belonging to each of them.<sup>1</sup>

4. Every poor-house, alms-house, house of industry,<sup>2</sup> and every house belonging to a company incorporated for the reformation of offenders, or to improve the moral condition of seamen,<sup>3</sup> and the real and personal property used for such purposes belonging to or connected with the same.

5. The real and personal property of every public library.<sup>4</sup>

6. All stocks owned by the State, or by literary or charitable institutions.

7. The personal estate of every incorporated company not made liable to taxation on its capital, in the fourth title of this chapter.<sup>5</sup>

<sup>1</sup> The N. Y. Consolidated Act, L. 1882, ch. 410, sec. 827, makes these provisions inapplicable to any such building for public worship and any such school-house or other seminary of learning in the city of New York "unless the same shall be exclusively used for such purposes, and exclusively the property of a religious society." *Young Men's C. A. v. Mayor, &c.* 113 N. Y. 189. As to school-houses, see *Church of St. Monica v. Mayor, supra*. See, also, *Congregation v. City of New York*, 1 N. Y. Supp. 35. For institutions in New York city exempted from taxation, see L. 1882, ch. 410, secs. 824, 827.

<sup>2</sup> *Estate of Noyes*, N. Y. Law Jour. July 5, 1890.

<sup>3</sup> See *Matter of Vanderbilt*, 10 N. Y. Supp. 239.

<sup>4</sup> *Matter of Lenox*, 9 N. Y. Supp. 895.

<sup>5</sup> The following is the provision referred to in the last subdivision: Sec. 1. "All monied or stock corporations deriving an income or profit from the capital or otherwise, shall be liable to taxation on their capital in the manner hereinafter prescribed." 2 R. S. Banks, 8th ed. p. 1149. See, construing this section Cat-



*(b). Pennsylvania.*<sup>1</sup>—

- (1) Father, mother, wife, children and
- (2) Lineal descendant born in lawful wedlock, or
- (3) Wife or widow of the son of the person dying seized or possessed.

(4) Estates of less than \$250.

(5) Bequests to executors—of a fair and reasonable sum—in lieu of commissions. Excess taxable.<sup>2</sup>

*(c). Maryland.*<sup>3</sup>—

(1) The father, mother, husband, wife, children and

(2) Lineal descendants of the decedent.

(3) Estates under \$500.

*(d). Virginia.*<sup>4</sup>—

(1) Lineal descendants or

(2) Father, mother, husband, wife, brother, sister.

(3) Nephew or niece.

lin v. Trustees, &c. 113 N. Y. 133; Matter of Vanderbilt, *supra*, and cases *post*, p. 55, note 3. For a list of exemptions by special statute, see Davies' System of Taxation, p. 288; also L. 1890, ch. 553; Appendix.

<sup>1</sup> Laws 1887, p. 79, sec. 1; Appendix.

<sup>2</sup> By the Cons. Penn. 1873, art. ix, "the General Assembly may by general laws exempt from taxation public property, held for public purposes; actual places of religious worship, places of burial not owned or held for private or corporate profit, and institutions of purely public charity."

<sup>3</sup> 2 Md. Pub. Gen. Laws 1888, art. 81, sec. 102, p. 1242; see Appendix. This statute is a model of good drafting, and contains some excellent provisions, especially those relating to contingent remainders, etc.

<sup>4</sup> Act 1866-67, p. 861, ch. 64, sec. 3.

*(e). West Virginia.*<sup>1</sup>—

- (1) Father, mother, wife, children and
- (2) Lineal descendants of the grantor, devisor or intestate.

(3) Estates under \$1,000.

*(f). Delaware.*<sup>2</sup>—

- (1) Father, mother, wife, children and
- (2) Lineal descendants of the decedent.
- (3) Estates under \$500.

*(g). Connecticut.*<sup>3</sup>—

- (1) Father, mother, husband.
- (2) Lineal descendants.
- (3) Adopted child.
- (4) Lineal descendants of any adopted child.
- (5) The wife or widow of a son.
- (6) The husband of the daughter of decedent or
- (7) Bequests for some charitable purpose or
- (8) Purposes strictly public within the State.
- (9) Estates under \$1,000.

The statute defines the words "charitable purpose" to include gifts to any educational, benevolent, ecclesiastical or missionary corporation, association or object.<sup>4</sup>

*(h). North Carolina.*<sup>5</sup>—

- (1) Lineal descendant or

<sup>1</sup> Warth's Code, 2d ed. ch. 32; L. 1887, ch. 31.

<sup>2</sup> Tax 1 to 5 per cent. Revised Code, 1874, p. 38.

<sup>3</sup> Pub. Law 1889, ch. clxxx, p. 106. See Appendix.

<sup>4</sup> Sec. 17.

<sup>5</sup> Battles' Rev. 1873, p. 775, sec. 59; repealed by Code N. C. 1883, sec. 3867.

(2) Ancestor of the husband or wife of the deceased.

(3) Husband or wife of such ancestor or decedent, or to which such collateral relations may become entitled to under the law for the distribution of the intestate's estate, and which real and personal property may not be required in payment of debts and other liabilities.

1. If such collateral relations be brother or sister of the father or mother of the deceased, or issue of such brother or sister, a tax of one per cent. is imposed.

2. If such collateral relation be a more remote relation, or the devisee or legatee be a stranger, a tax of  $2\frac{1}{2}$  per cent. is imposed.<sup>1</sup>

§ 4. *Charitable, religious and other corporations and objects.*—Under the general designation of charitable and religious corporations and objects, have been included, as claiming exemptions under these acts, churches, cemeteries, alms-houses, hospitals, dispensaries, orphan asylums, homes, houses of industry, colleges, public libraries, museums of art and history, societies to protect animals, benefit, insurance and Christian associations, and legacies to priests for masses and the like.<sup>2</sup>

In England, under the legacy duty act, legacies to charitable and religious corporations were at first

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<sup>1</sup> The statutes of Louisiana and those of Congress have been repealed. See Chapter I, pp. 12, 14.

<sup>2</sup> See L. N. Y. 1890, ch. 553 (Appendix), by which the list of such institutions entitled to exemption is greatly extended.

taxable with the highest rate of duty.<sup>1</sup> Subsequently they were, to a limited extent, exempted by statute.<sup>2</sup>

In order to be exempted it was held that the legacy for charitable purposes must be expressly so given by the will itself, and not be the subject of any secret trust.<sup>3</sup> But all such legacies seem now to be made liable to succession duty, except in Ireland.<sup>4</sup>

In the State of New York it has never been the general policy to wholly exempt the real or personal property of churches and colleges, or charitable institutions, from taxation.<sup>5</sup> Where the policy of complete exemption has been adopted, it was by means of special acts applicable to particular and specified corporations, and in that State it is said there is no general act exempting the personal property of such<sup>6</sup> colleges or churches.<sup>7</sup> And the same policy has prevailed in other States where these acts have been un-

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<sup>1</sup> *In re Griffiths*, 14 M. & W. 510; *Ex parte Franklin*, 3 Y. & J. 544; *In re Parker*, 4 H. & N. 666; *In re Wilkinson*, 1 C. M. & R. 142.

<sup>2</sup> 56 Geo. III, ch. 56; 5 and 6 Vict. ch. 82.

<sup>3</sup> *Cullen v. Atty.-Genl.* L. R. 1 H. L. 890. But see *Matter of Farley*, 15 N. Y. St. Rep. 727.

<sup>4</sup> See 16 and 17 Vict. ch. 51, sec. 16; 44 Vict. ch. 12, sec. 42; *Cullen v. Atty.-Genl.* *supra*.

<sup>5</sup> *Catlin v. Trustees, &c.* 113 N. Y. 141; *Sherrill v. Christ Ch. Ct. of App. N. Y. Law Jour.* July 21, 1890.

<sup>6</sup> For general exemption statutes of New York, see p. 45, *supra*.

<sup>7</sup> But this policy was widely departed from by the recent Act of 1890 (ch. 553, Appendix), which seems to exempt the corporations therein named not only from the collateral inheritance tax, but also from general taxation. The propriety of such wholesale exemption is questionable. The Act, *supra* p. 44, has been held not retro-active. *Est. of Minturn*, N. Y. Law Jour. July 18, 1890; *Sherrill v. Christ Ch. Ct. App., supra*; reversing *Matter of Van Kleeck*, 55 Hun, 472. See *Est. of Waller*, Law Jour. July 28, 1890.

der construction,<sup>1</sup> but the wisdom of expressly exempting such associations or corporations as are purely charitable from the collateral tax cannot be questioned, if for no other reason than that such institutions in various ways, and principally by aiding, educating and sheltering the poor, sick, and destitute, both young and old, to a great extent relieve the State from the burden of supporting such persons.<sup>2</sup>

But it is essential that the basis of such exemption should clearly appear, either from the act itself imposing the collateral tax, or in some act—general or special—referred to or meant to be included in the exemption words of the statute,<sup>3</sup> for, without such express exemption, it is clear that a mere exemption of the corporation or association from general property taxation will not operate to relieve a tax imposed, not upon property, but upon the succession thereto.<sup>4</sup>

The statutes of New York and Connecticut both seem to meet this requirement, because by express terms the tax in New York is imposed upon property

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<sup>1</sup> *Miller v. Com.* 27 Grat. 110; *Barringer v. Com.* 2 Jones' Eq. 436; *Com. v. Herman*, 16 W. N. C. 210-212.

<sup>2</sup> *Assn. Colored Orphans v. Mayor*, 104 N. Y. 588; *Matter of Curtis*, 25 N. Y. St. Rep. 1028; *Home for Friendless v. Rouse*, 75 U. S. 436; *People v. Swiss Benev. Soc.* 36 Hun, 311; *Matter of Keech*, N. Y. Law Jour. July 7, 1890; distinguishing *People v. Barber*, 42 Hun, 27; 106 N. Y. 669.

<sup>3</sup> *Catlin v. Trustees, &c.* *supra*; *Matter of Chittenden*, N. Y. Law Jour. June 5, 1890.

<sup>4</sup> *Miller v. Com.* 27 Grat. 110; *Barringer v. Cowan*, 2 Jones Eq. 436; *Com. v. Herman*, 16 W. N. C. 210-212. See *Estates of Keith and Dailey*, 22 N. Y. St. Rep. 337; *Matter of Van Kleeck*, 55 Hun, 472; reversed as *Sherrill v. Christ Ch.* N. Y. Law Jour. July 21, 1890.

passing to any "body politic or corporation . . . other than to . . . the societies, corporations and institutions now exempted by law from taxation."<sup>1</sup>

Some of the main difficulties under this clause of the statute appear to be to ascertain precisely, from the general language used: *first*, the particular societies, institutions and corporations meant to be exempted;<sup>2</sup> whether the language is restricted to those that are merely charitable or religious in their nature, or whether, more liberally speaking, the term includes other corporations not strictly charitable, but public in nature;<sup>3</sup> and *second*, whether the words "exempted from taxation" mean that the societies or corporations shall be exempted from all taxation whatsoever, or whether, being charitable or religious associations within the definition of the law, and having their property exempt either by special or general statute, that is sufficient to bring them within the terms of this act.

These questions, and many others, have been only partially answered by the numerous decisions in the lower courts of New York. It would, perhaps, have been more satisfactory had the act expressly stated

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<sup>1</sup> As to a strict construction of this clause, see *Catlin v. Trustees, &c.* 113 N. Y. 133; *People v. Commissioners of Taxes*, 19 Hun, 463, 464; *Matter of Miller*, 5 Dem. 132; *affd.* 45 Hun, 244; *Est. of Herr*, 55 Hun, 167; *Matter of Van Kleeck*, *Id.* 472; reversed as *Sherrill v. Christ Ch. supra.* See Appendix, L. 1890, ch. 553.

<sup>2</sup> This is, perhaps, obviated by ch. 553, L. 1890.

<sup>3</sup> A public library is exempt. *Am. Geo. Soc. v. Comm.* 11 Hun, 505; *Matter of Herr*, 27 N. Y. St. Rep. 591; *Matter of Lenox*, 9 N. Y. Supp. 895. But see *Matter of Chittenden*, N. Y. Law Jour. June 5, 1890.

that only such charitable, religious, and purely public corporations should be exempted from the collateral tax as were already, or should be thereafter, expressly exempted under general or special statute from taxation upon their property. This objection is perhaps obviated by the recent act of 1890. In this respect, while the statute of Connecticut is more specific in confining exemptions to gifts or devises for charitable or strictly public purposes,<sup>1</sup> it expressly extends these terms so as to include educational, benevolent ecclesiastical or missionary corporations, associations or objects.

The uniform interpretation thus far placed upon the language of the New York statute in force prior to the act of 1890, has tended very much to restrict its meaning to include merely such institutions and corporations as are purely charitable or public, and exempt, as such, from a property tax, either by general statute<sup>2</sup> or by special act. If, finally, neither of these sources affords any ground for exemption, the claim thereto must be disallowed.<sup>3</sup>

Claims for exemption have, therefore, been made upon the theory, *first*, that the claimants were, as colleges and churches, and museums of art and history, exempt under general statutes as "incorporated companies;"<sup>4</sup> *second*, upon the ground that

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<sup>1</sup> Appendix, sec. 17.

<sup>2</sup> 2 R. S. Banks, 8th ed. ch. 13, 1084; *supra*, p. 45.

<sup>3</sup> Catlin v. Trustees Trinity Col. 113 N. Y. 138.

<sup>4</sup> Catlin v. Trustees, *supra*. See Catlin v. Foreign and Domestic Mis. Soc. Id. p. 625; Sherrill v. Christ Ch. Ct. App. N. Y. Law Jour. July 21, 1890; Matter of Vanderbilt, 10 N. Y. Supp. 239; N. Y. Law Jour. Apl. 22, 1890; Matter of Kennedy, Id. Apr. 25, 1890. They are now exempt, it seems, by L. 1890, ch. 553. See Appendix.

hospitals, dispensaries, asylums,<sup>1</sup> cemeteries, homes, and the like institutions were exempt under general or special statutes, as alms-houses, homes for seamen, poor-houses, buildings for public worship,<sup>2</sup> public libraries and the like;<sup>3</sup> and, *third*, upon various miscellaneous grounds: as that the legacies were for masses, and similar purposes. The leading case in New York, under the first proposition, is that of *Catlin v. Trustees of Trinity College*,<sup>4</sup> where decedent had bequeathed legacies to two institutions, one a church and the other a college, both of which claimed exemption upon the general ground that they were included within the term "incorporated companies," as defined by general law.<sup>5</sup>

But in defining the general policy of the State as

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<sup>1</sup> See L. 1890, *supra*.

<sup>2</sup> See L. 1890, *supra*.

<sup>3</sup> *Estate Ellen Thompson*, N. Y. Daily Reg. Nov. 14, 1889; *Est. Keech*, 26 N. Y. St. Rep. 433; *affd. as Matter of Keech*, N. Y. Law Jour. July 7, 1890; *Matter of Vanderbilt*, Id. Apl. 22, 1890; 10 N. Y. Supp. 239; *Matter of Kennedy*, Id. Apr. 25, 1890; *Matter of Chittenden*, Id. June 5, 1890; *Est. of Quinn*, N. Y. Daily Reg. July 24, 1889; *Est. of Dewey*, N. Y. Law Jour. Oct. 21, 1889; *Matter of Curtis*, 25 N. Y. St. Rep. 1028; *Matter of Miller*, 5 Dem. 132; *affd.* 45 Hun, 244; *Matter of Lenox*, 9 N. Y. Supp. 895; *Matter of Herr*, 22 N. Y. St. Rep. 905; *reversed* 27 Id. 591; 55 Hun, 167; *Church Charity v. Peo.* 6 Dem. 154; *s. c. Matter of Hunter*, 11 N. Y. St. Rep. 704; *Est. of Hochster*, N. Y. Law Jour. Jan. 22, 1890; *see* 9 N. Y. Supp. 896; *Assn. Colored Orphans v. Mayor*, 104 N. Y. 588; *Matter of Van Kleeck*, 55 Hun, 472; *reversed as Sherrill v. Christ Ch.* N. Y. Law Jour. July 21, 1890; *Estate of Minturn*, N. Y. Law Jour. July 2, 1890; *Est. of Noyes*, Id. July 5, 1890.

<sup>4</sup> 113 N. Y. 137. See Id. p. 625. This doctrine has recently been reiterated by the same court in *Sherrill v. Christ Ch.* *supra*.

<sup>5</sup> See *supra*, p. 45; 2 R. S. Banks, 8th ed. ch. 13, sec. 7, p. 1084.



being against the complete exemption of colleges, churches, charitable, and religious institutions from taxation unless exempted by general law or special charter,<sup>1</sup> it was held that the words "incorporated companies" did not include such religious, literary or charitable institutions,<sup>2</sup> but referred to certain business corporations, and, therefore, that the claimants, not showing any general or special statutory exemption, were not within the meaning of the term "exempted by law from taxation."<sup>3</sup>

This was the extent of the decision made, the court saying: "We know of no general statute exempting the personal property of religious societies or colleges from taxation."

Museums of art and history are not within the term "incorporated companies,"<sup>4</sup> and it seems, whether they are so or not, if they derive an income from capital or otherwise, they are liable to taxation.<sup>5</sup>

And in North Carolina and Virginia bequests to colleges and churches have been held liable to this

<sup>1</sup> See *Matter of Vanderbilt, supra*; *Matter of Chittenden, supra*.

<sup>2</sup> Now exempt, it seems, by L. 1890, ch. 553, Appendix.

<sup>3</sup> The words "incorporated company," used in Rev. Stat. subd. 7, *supra*, p. 46, refer to certain moneyed or stock corporations not deriving any income or profit from capital or otherwise. They were applied merely to banking or loan institutions and insurance companies. 1 R. S. 598, sec. 51; 2 Potter's Corp. 518, sec. 435. and cases cited. And see *Utica Cotton Co. v. Supervisors*, 1 Barb. Ch. 432; *Peo. v. Supervisors*, 18 Wend. 605; *Peo. v. Same*, 4 Hill, 20; *affd.* 7 Id. 504, 518; *Peo. v. Same*, 16 N. Y. 438; *Peo. v. Cassity*, 46 Id. 53; *Matter of Vanderbilt*, 10 N. Y. Supp. 239.

<sup>4</sup> *Matter of Vanderbilt, supra*.

<sup>5</sup> *Id.* See, also, *Matter of Chittenden*, N. Y. Law Jour. June 5, 1890; L. 1890, ch. 553 (Appendix).

tax under statutes which did not exempt corporations, notwithstanding that they were otherwise expressly relieved from general taxation.<sup>1</sup>

While in Pennsylvania, under general statutes, it has been held that a college founded and maintained by donations, open to all sects and to visitation by the State, and making no profit, although taking a tuition fee, is a public charity, and as such exempt.<sup>2</sup>

But real estate conveyed gratuitously to a charitable corporation chartered to give free instruction in the natural sciences, and held and rented by it as a source of income to carry out its purpose, is neither a "gift," "bequest" or "endowment" within the meaning of a statute exempting all gifts, bequests or endowment belonging to it from taxation.<sup>3</sup>

Under the *second* proposition claims for exemption have been made by various institutions upon the ground that they were alms-houses, poor-houses, houses of industry, homes for seamen, cemeteries, school-houses, houses for public worship, public libraries, and the like, within the provisions of general or special statutes.<sup>4</sup>

While the cases upon this subject are not altogether harmonious, the question, however, as to what constitutes an "alms-house" under the general statute has been before the Court of Appeals of New

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<sup>1</sup> *Barringer v. Cowan*, 2 Jones' Eq. 436; *Miller v. Com.* 27 Grat. 110; *Com. v. Herman*, 16 W. N. C. 210, 212.

<sup>2</sup> *Northampton College v. Lafayette College*, 46 Leg. Int. 423.

<sup>3</sup> *Wagner Institute v. Phila.* 9 Cent. Rep. 617; 25 W. N. C. 437. And see 19 Abb. N. C. 231, for note on cases as to exemption of religious corporations from taxation.

<sup>4</sup> See 2 R. S. Banks, 8th ed. ch. 13. sec. 4, *supra*, p. 46.

York, and a private institution engaged in aiding orphans, giving them clothing and education gratuitously, was defined to be an alms-house—as performing a work of pure charity—and was consequently held exempt from taxation.<sup>1</sup>

Advantage has been taken of this doctrine, and in numerous cases arising under the inheritance tax laws, where the claimant could bring itself within the principles laid down in this case, it has been held to be one of the societies, etc., “exempted by law from taxation.”<sup>2</sup>

Hence all societies are exempt as alms-houses, whose object is to support, maintain and educate orphans and half-orphans without charge,<sup>3</sup> and, so long as a society and hospital wholly dependent upon voluntary contributions comes within the definition of an alms-house, it is not necessary that it should be specially exempt from taxation by special law. Such an institution is a charitable institution.<sup>4</sup>

In this case the Surrogate (Coffin, S.) defined a

<sup>1</sup> *Assn. Colored Orphans v. Mayor*, 104 N. Y. 588, 589; *Matter of Keech*, Genl. Term, N. Y. Law Jour. July 7, 1890.

<sup>2</sup> For a list of societies and corporations in New York city held liable to this tax, see *Matter of Vanderbilt*, 10 N. Y. Supp. 239. See *Matter of Chittenden*, N. Y. Law Jour. June 5, 1890.

<sup>3</sup> *Est. of Quinn*, N. Y. Daily Reg. July 24, 1889; *Matter of McPherson*, 5 Dem. 166-169.

<sup>4</sup> *Matter of Curtis*, 25 N. Y. St. Rep. 1028; citing *Assn. Colored Orphans v. Mayor*, 104 N. Y. 589; *Swiss Benv. Soc. v. Commissioners*, 36 Hun, 311; *N. Y. Infant Asylum v. Supervisors*, 21 Hun, 116; and reviewing *Catlin v. Trustees*, 113 N. Y. 137; see, also, *Matter of Miller*, 5 Dem. 132; *Est. of Hochster*, N. Y. Law Jour. Jan. 22, 1890; *contra*, *Est. of Herr*, 22 St. Rep. 905; reversed in 55 Hun, 167; 27 N. Y. St. Rep. 591.

hospital, in its modern sense, to be a building founded through charity, where the sick and disabled may be treated solely at their own expense, or at the sole expense of the corporation, which receives only indigent patients, and has thus all the attributes of an alms-house. In either sense he held such an institution is a charitable institution. Later cases, however, hold that wherever there is a charge made to the patient it is not an alms-house.<sup>1</sup>

So a corporation, engaged in maintaining a house for the support of indigent and aged persons, and of destitute children, and hospitals and dispensaries for the relief of the infirm, sick and needy, which is maintained by voluntary gifts, and which has no capital stock, and conducts no business, is exempt as being in effect an alms-house, poor-house or school-house within the general exemption statutes.<sup>2</sup>

And where the institution dispenses its benefits without any charge whatever, it seems the fact that it has no house where the poor are lodged does not take it out of the alms-house class if it provides the means for lodging.<sup>3</sup>

On the other hand, it has been asserted that notwithstanding certain societies, such as homes, dispensaries and hospitals are "alms-houses" within the

<sup>1</sup> See *Matter of Keech*, Gen. T. N. Y. Law Jour. July 7, 1890. and cases *post*, p. 61, note.

<sup>2</sup> *Church Charity v. People*, 6 Dem. 154; s. c. *Matter of Hunter*, 11 N. Y. St. Rep. 704.

<sup>3</sup> *Matter of Lenox*, 9 N. Y. Supp. 895; but this would seem to conflict with the definition of an alms-house, *i. e.*, a house appropriated to the poor; for the use of the poor; where they are to have a *place of refuge*, and to be clothed, &c. *Swiss Ben. Soc. v. Comm's.* 36 Hun, 311; *Col. Orph. Asylum v. Mayor*, 104 N. Y. 589; *Matter of Keech*, *supra*.

general exemption statutes, that as such exemption merely applies to the property actually occupied by them, and the personal property actually contained therein, to entitle them to exemption under the Inheritance Act, it is still necessary that there should be a total and absolute exemption from general taxation of all property which they have or could have "under any and every possible circumstance or condition," and that, if such Societies can hold any property which would be liable to taxation, then they are liable under the Inheritance Act.<sup>1</sup>

If it were necessary that such charitable association, in order to come within the exemption clause, should show that it was exempt from all taxation whatever under every possible circumstance and condition, few corporations, even those purely charitable, would or could ever be allowed exemption under these acts. The result of such a condition of the law would be in effect to nullify the express exemption which is extended to all societies, institutions and corporations "now exempted by law from taxation."

Hence, it would seem that the Act does not mean that such societies shall be exempt from all possible taxation. This the legislature could hardly have intended, because it is well settled, that even though charitable corporations are by general statute relieved in most positive and general language from all taxation, this does not in every case relieve them from

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<sup>1</sup> Estate of Herr, 22 N. Y. St. Rep. 905; reversed in 27 Id 391; 55 Hun, 167; *contra*, Matter of Curtis, 25 N. Y. St. Rep 1028; Estate of Keith & Daily, 22 Id. 337; Estate of Hochster, N. Y. Law Jour. Jan. 22, 1890, and cases cited, *supra*.

certain special taxes, and such the Collateral Inheritance Act of this State has been decided to be.<sup>1</sup>

But it would seem that the law is fully complied with when it has been satisfactorily shown that the claimant is a charitable institution, exacting no fee or reward, and purely such under either special or general law, as has been held in regard to an almshouse,<sup>2</sup> and is generally exempt from taxation.

A cemetery declared by law to be exempt from all public tax so long as the same shall remain dedicated to the purposes of a cemetery is exempt,<sup>3</sup> and a bequest in trust to pay to a church a certain sum towards the building of a new church, or the renovation of the present one, is exempt as a building of public worship, although the new church was built and paid for through a loan in anticipation of the payment of the legacy by the executors; if, however, the gift had been an absolute one and not for building the new church, it seems the legacy would have been liable.<sup>4</sup> This view of the law has, however, recently been rejected by the Court of Appeals, and the legacy held liable to the tax,<sup>5</sup> upon the ground that it was simply a legacy of money.

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<sup>1</sup> See *Matter of McPherson*, 104 N. Y. p. 317; *Matter of Enston*, 113 Id. 174; *Cooley on Taxation*, 2d ed. 206, 207; and cases cited, p. 207, note 3; *Barringer v. Cowan*, 2 Jones' Eq. 436; *Miller v. Com.* 27 Grat. 110.

<sup>2</sup> *Assn. Colored Orphans*, 104 N. Y. 589, and cases, *supra*; *Matter of Herr*, 55 Hun, 167; 27 N. Y. St. Rep. 591; reversing s. c. 22 Id. 905; *Matter of Miller*, 5 Dem. 132.

<sup>3</sup> *Estate of Dewey*, N. Y. Law Jour. Oct. 21, 1889.

<sup>4</sup> *Matter of Van Kleeck*, 29 N. Y. St. Rep. 383; 55 Hun, 472; citing *Catlin v. Trustees*, 113 N. Y. 133; *contra*, *In re Parker*, 5 Jur. N. S. 1058.

<sup>5</sup> *Sherrill v. Christ Ch.* N. Y. Law Jour. July 21, 1890; reversing *Matter of Van Kleeck*, *supra*.

Religious corporations in New York are now expressly exempted from this tax.<sup>1</sup> So a society for the improvement of the moral condition of seamen is exempt under general law.<sup>2</sup>

But the mere fact that a society or corporation not exempted by special charter or general law, is exempted upon a portion of its property is of no avail,<sup>3</sup> and a bequest to a missionary society, known as "The Paulist Fathers," which could not show special or general exemption, was held liable.<sup>4</sup>

So a charitable institution,<sup>5</sup> a home for the aged, exacting an admission fee and requiring an applicant to make a will leaving all property to it, is not an alms-house under the general law,<sup>6</sup> and an institution requiring pupils to pay, if they are able so to do, is not, it seems, a purely charitable institution within the meaning of an alms-house,<sup>7</sup> the theory being that any charge, however small, takes the claimant out of the alms-house class. In one case,

<sup>1</sup> L. 1890, ch 553, Appendix.

<sup>2</sup> Matter of Vanderbilt, 10 N. Y. Supp. 239.

<sup>3</sup> Estate of Keith & Daily, 22 N.Y. St. Rep. 337; Matter of Vanderbilt, *supra*; Matter of Kennedy, N. Y. Law Jour. Apr. 25, 1890; Est. of Minturn, Id. July 2, 1890.

<sup>4</sup> Estate of Kavanagh, 24 N. Y. St. Rep. 404.

<sup>5</sup> Now exempt by L. N. Y. 1890, ch. 553, Appendix.

<sup>6</sup> Matter of Lenox, 9 N. Y. Supp. 895; Estate of Keech, 26 N. Y. St. Rep. 433; *affd.* as Matter of Keech, N. Y. Law Jour. July 7, 1890; Est. of Ellen Thompson, N. Y. Daily Reg. Nov. 14, 1889.

<sup>7</sup> Estate of Hochster, N. Y. Law Jour. Jan. 22, 1890; and see *Congregation v. City of New York*, 1 N. Y. Supp. 35; *People v. Barber*, 42 Hun, 27; Matter of Vanderbilt, N. Y. Law Jour. Apr. 22, 1890; 10 N. Y. Supp. 239. See, also, Est. of Minturn, *supra*; Est. of Noyes, N. Y. Law Jour. July 5, 1890; Matter of Keech, *supra*.

this rule was carried to the extent of imposing the tax upon an institution which made a paltry charge for taking care of poor infants.<sup>1</sup>

In Pennsylvania, however, a college founded and maintained by donations, although taking a tuition fee, is a public charity and exempt,<sup>2</sup> and in Virginia an orphan asylum exempt under general law from taxation is liable to the Inheritance Tax.<sup>3</sup>

The institution known as the Young Men's Christian Association is not a seminary of learning or house of religious worship, and therefore not exempt from taxation.<sup>4</sup> A school house in the city of New York is not exempt, unless it belongs to the public school system, or be exclusively the property of an incorporated religious society.<sup>5</sup> But a Geographical Society, the works of which are accessible at all times to the public, is a public library within the meaning of the general law, and is exempt.<sup>6</sup> Under the English legacy acts there is a provision exempting books, prints, statues, coins, or works of art, bequeathed to certain institutions in trust, and where not to be sold.<sup>7</sup> The phrase "public wor-

<sup>1</sup> Matter of Vanderbilt; Matter of Lenox, *supra*; Matter of Chittenden, N. Y. Law Jour. June 5, 1890.

<sup>2</sup> Northampton Co. v. Lafayette College, 46 Leg. Int. 423. But see Wagner Institute v. Phila. 9 Cent. Rep. 617; 25 W. N. C. 437.

<sup>3</sup> Miller v. Com. 27 Grat. 110; Barringer v. Cowan, 2 Jones' Eq. 436; Com. v. Herman, 16 W. N. C. 210, 212.

<sup>4</sup> Matter of Vanderbilt, *supra*.

<sup>5</sup> Church of St. Monica v. Mayor, &c. 119 N. Y. 91.

<sup>6</sup> Am. Geographical Society v. Commissioners, 11 Hun, 505; Matter of Lenox, 9 N. Y. Supp. 895; Matter of Herr. 55 Hun, 167.

<sup>7</sup> 39 Geo. III, ch. 73, sec. 1.



ship" refers to the usual church services upon the Sabbath, open freely to the public, and in which any one may join.<sup>1</sup> The word "person," under these acts, includes a bequest to a corporation, and it is consequently not exempt.<sup>2</sup>

*Third.* The following legacies to various charitable, religious and other institutions or persons have been declared not exempt where such institutions were not exempted by general or special law; a bequest to a church<sup>3</sup> to keep the graves of testator's ancestors and family in order;<sup>4</sup> a gift to a pastor to say masses for the decedent.<sup>5</sup>

Nor is a specific bequest to executors in trust to be used for masses for the decedent and her husband to be said by a priest exempt, not being made part of the funeral expenses,<sup>6</sup> but where part of such funeral expenses is for a burial plot, it is exempt.<sup>7</sup>

And the tax is payable where the bequest for masses is invalid in law and goes to a religious cor-

<sup>1</sup> *Young Men's C. A. v. The Mayor*, 113 N. Y. 187. See *Matter of Van Kleeck*, 29 N. Y. St. Rep. 383.

<sup>2</sup> *Miller v. Com.* 27 Grat. 117.

<sup>3</sup> See *Catlin v. Trustees*, 113 N. Y. 133; *Matter of Miller*, 5 Dem. 138; but see *L.* 1890, ch. 553, Appendix; *Matter of Van Kleeck*, *supra*.

<sup>4</sup> *Walter's Est.* 3 Penn. C. R. 447. *In re Birkett*, 9 Ch. Div. 576; *Hoare v. Osborne*, L. R. Eq. 585.

<sup>5</sup> *Seibert's Appeal*, 18 W. N. C. 276; *Rhymes' Appeal*, 93 Pa. St. 142; *Stewart v. Green*, Ir. Rep. 5 Eq. 470.

<sup>6</sup> *Estate of Black*, 24 N. Y. St. Rep. 341; s. c. 1 Con. Surr. Rep. 477. As to the validity of such bequests, see *Holland v. Allcock*, 108 N. Y. 312; *Power v. Cassidy*, 79 Id. 602; *Prichard v. Thompson*, 95 Id. 76.

<sup>7</sup> *Matter of Vinot*, 26 N. Y. St. Rep. 610.

poration which is made residuary legatee under the will.<sup>1</sup>

So a bequest to a mutual benefit assurance association, which is not exempted under general or special law, is liable.<sup>2</sup>

But money paid by a beneficiary society to a deceased member's next of kin, not being any part of decedent's estate, is not within the act.<sup>3</sup>

§ 5. *Foreign corporations.*—The words “now exempted by law from taxation” refer to exemptions under the laws of the State imposing the tax, and the fact that a foreign corporation, which is a beneficiary under the will of a resident of the taxing State, is exempt from taxation under the laws of the jurisdiction of the corporation's origin, does not withdraw it from the operation of the inheritance tax. It seems that there is no comity which requires that corporations existing under the laws of other States should be placed under a more favorable position than domestic corporations with respect to taxation.<sup>4</sup> Hence it would seem that such foreign corporations are still liable

<sup>1</sup> Estate of Devlin, N. Y. Daily Reg. Oct. 15, 1889.

<sup>2</sup> Estate of Jones, 18 N. Y. St. Rep. 383; 1 Con. Surr. Rep. 125. See, also, Matter of Hunter, 11 N. Y. St. Rep. 700; s. c. Church Charity v. People, 6 Dem. 154; Atty.-Gen. v. Abdy. 1 H. & C. 266.

<sup>3</sup> Vogel's Estate, 1 Penn. C. R. 352; Folmer's App. 87 Penn. St. 133.

<sup>4</sup> Catlin v. Trustees, 113 N. Y. 133; Matter of McCoskey, 6 Dem. 438; s. c. 17 N. Y. St. Rep. 829; Matter of Vanderbilt, 10 N. Y. Supp. 239; N. Y. Law Jour. Apr. 22, 1890; Est. of Noyes, Id. July 5, 1890; People v. McLean, 80 N. Y. 254; Carpenter v. Penn. 17 Howard, 462; People v. Fire Assn. 92 N. Y. 311.

in this State, notwithstanding the provisions of the recent statute.<sup>1</sup>

§ 6. *Adopted and illegitimate children.*—The laws of New York and Connecticut relieve adopted children from the collateral inheritance tax, and in New York, those persons to whom the deceased, for not less than ten years prior to his death, stood in the mutually acknowledged relation of a parent, are excepted, and the law of Connecticut exempts the lineal descendants of such adopted children.

Under this subject we will consider, *first*, the cases that have arisen respecting adopted children; *second*, such as come within the class of persons standing in the mutually acknowledged relation of parent to the legatee or devisee, and *third*, such as concern illegitimate children.

The word "children," in these acts, does not include adopted children, but merely relates to such as are children in fact of decedent and born in lawful wedlock. Such adopted children are therefore liable to the tax,<sup>2</sup> where not expressly exempted.

In New York, owing to the passage of the amendatory act of 1887, relieving adopted children, the law became somewhat involved as to those adopted children who were liable under the previous act of 1885, but it has been held that as the former act did not repeal the latter, but was simply amendatory thereof, and not retro-active, only bequests to the adopted children of decedent dying *after* the act of

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<sup>1</sup> L. 1890, ch. 553, Appendix.

<sup>2</sup> *Matter of Miller*, 110 N. Y. 216; affg. 47 Hun, 394; 6 Dem. 119; *Com. v. Nancrede*, 32 Pa. St. 389; *Tharp v. Com.* 50 Id. 500; *Packard's App.* 37 Leg. Int. 135.

1887 went into effect were relieved from the tax, upon the theory that the new or changed parts of the latter act were not to be considered law at any time prior to the date of its passage,<sup>1</sup> hence, the vested rights of the State, accruing under the act of 1885, as to such adopted children, liable under the latter act, still continued, notwithstanding the proceeding against them to collect the tax was not begun until after the act of 1887 went into effect.<sup>2</sup>

Finally, by further amendatory statute,<sup>3</sup> such adopted children, and those persons to whom deceased stood in the mutual relation of parent, and against whom no assessment of the tax had been made, were "retro-actively exempted" from the tax, to which they were liable under the act of 1885, where no assessment of the tax had been made at the time of the passage of the amendatory act;<sup>4</sup> and thus, it would seem, all adopted children are now relieved under these acts.

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<sup>1</sup> Matter of Miller, 110 N. Y. 216; citing Ely v. Holton, 15 Id. 595. See, also, Matter of Kemeys, 9 N. Y. Supp. 182; 29 N. Y. St. Rep. 916. But see Fox v. Com. 16 Grat. 1.

<sup>2</sup> Matter of Arnett, 49 Hun, 599; Matter of Ryan, 18 N. Y. St. Rep. 992; Matter of Cager, 111 N. Y. 346; Matter of Thompson, *sub nom.* Warrimer v. People, 6 Dem. 211; 14 N. Y. St. Rep. 487; Kissam v. People, 6 Dem. 171; Matter of Miller, 6 Id. 119; Estate of Hendricks, 18 N. Y. St. Rep. 989; Matter of Brooks, 6 Dem. 165; Matter of Kemeys, *supra*. See Matter of Howe, 112 N. Y. 102; affg. 48 Hun, 336.

<sup>3</sup> Law 1889, ch. 479; see Appendix. This law took effect when signed by the Governor, June 14, 1889, and not when it passed the Legislature. Matter of Kemeys, *supra*.

<sup>4</sup> Matter of Hughes, N. Y. Daily Reg. July 27, 1889; Estate of Thorne, N. Y. Law Jour. Jan. 21, 1890; Matter of Kemeys, *supra*. This does not, however, include the children of such adopted children. Est. of Bird, N. Y. Law Jour. July 28, 1890.

Unless the adoption be in conformity with the laws of the State,<sup>1</sup> the legacy to the adopted child is liable, and the mere use of the words "my adopted child" in the will is insufficient.<sup>2</sup>

So it seems, an act of the legislature giving an adopted child the right to inherit, does not relieve him from the tax,<sup>3</sup> and where an adopted child possessing a personal estate, dies unmarried and intestate, leaving a parent by nature surviving, the latter is the heir and is exempt.<sup>4</sup>

*Second.* In order to constitute the relation of a person standing in the mutually-acknowledged relation of parent under the New York statute, some time during the continuance of the intercourse between the persons between whom the relation is claimed to exist, there should be a period of dependence on the part of the younger—a time when the latter required and received parental care, though not necessarily a dependence for support and maintenance. The relation must therefore begin in youth, though not of necessity during legal minority, and it should not be confounded with relations in which the parental element is lacking. A step-parent does not necessarily stand in the relation of parent within the meaning of the act. Whether the parties do or not

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<sup>1</sup> Laws of N. Y. 1873, ch. 830; and see this question discussed by Kennedy, S., *Matter of Spencer*, 21 N. Y. St. Rep. 152; s. c. 1 Con. Surr. Rep. 208.

<sup>2</sup> *Estate of Gardner*, N. Y. Daily Reg. Mch. 4, 1889.

<sup>3</sup> *Com. v. Nancrede*, 32 Pa. St. 389; *Wayne's Est.* 2 P. C. R. 93; *Tharp v. Com.* 58 Pa. St. 500; *Packard's App.* 37 Leg. Int. 135.

<sup>4</sup> *Com. v. Powell*, 1 Montg. (9 Penn.), 66.

depends on the circumstances of each case.<sup>1</sup> And while it is necessary that adoption should be in strict conformity to law, in order to bring the devisee or legatee within the clause exempting persons to whom the deceased for not less than ten years prior to his or her death stood in the mutually-acknowledged relation of a parent, it seems it is not necessary that there should be any express agreement between the parties; but the relation may be shown to exist by facts and circumstances tending to disclose it. Hence, where all the relations between the parties—an aunt and a niece—were parental in their intent, character and results, acts and conduct are of themselves evidence by which a parental relation may be established, and the absence of the use of the words “mother and child” do not affect the result intended by both parties.<sup>2</sup> But where the child was only nine years old when decedent died, this provision of the statute affords no protection,<sup>3</sup> and it would seem that the liability of such persons, imposed by the Act of 1885,<sup>4</sup> is now taken away.<sup>5</sup>

*Third.* But the interest of an illegitimate child is taxable;<sup>6</sup> and where an illegitimate son was legitimated by act of legislature, approved a day after

<sup>1</sup> Matter of Capron, 30 N. Y. St. Rep. 948; 10 N. Y. Supp. 23.

<sup>2</sup> Matter of Spencer, 21 Id. 145; S. C. 1 Con. Sur. Rep. 208; Matter of Capron, *supra*.

<sup>3</sup> Matter of Gardner, N. Y. Daily Reg. Mch. 4, 1889.

<sup>4</sup> Matter of Ryan, 18 N. Y. St. Rep. 992.

<sup>5</sup> Matter of Hughes, N. Y. Daily Reg. July 27, 1889; Matter of Thorne, N. Y. Law Jour. Jan. 21, 1890; Matter of Kemeys, 29 N. Y. St. Rep. 916; 9 N. Y. Supp. 182; L. 1889, ch. 479; see Appendix.

<sup>6</sup> Wharton's Estate, 10 W. N. C. 105. And see Matter of Miller, 110 N. Y. 221.

the intestate's death, it was held that the tax, having already vested, was not affected by the act.<sup>1</sup> So an act of the legislature legitimating children of a testator, after a devise to them had vested, does not relieve the devise from the tax.<sup>2</sup> The intention of the legislature must be clearly expressed in order to relieve such children. Hence no inference that the legislature intended to relieve illegitimate children from the tax will be drawn from the mere fact of legitimation.<sup>3</sup>

An illegitimate child, however, legitimated by act of assembly, with all the rights and privileges of a child born in lawful wedlock, is exempt.<sup>4</sup> Under the English legacy act illegitimate children, subsequently legitimated by marriage of their parents, are not within the term "strangers to the blood," but inherit as children, and hence pay the lower grade of duty.<sup>5</sup>

§ 7. *Widows and husbands of deceased daughters.*<sup>6</sup>  
—In some of the States the wife or widow of a son, or the husband of a daughter,<sup>7</sup> are exempted, and also the widow of the decedent.

Where the widow of decedent is provided for in the will, but refuses to take thereunder, and elects to claim her dower in the estate, which is set aside,

<sup>1</sup> Galbraith v. Com. 14 Pa. St. 258; Wayne's Estate, 2 Penn. C. R. 93.

<sup>2</sup> Com. v. Stump, 53 Pa. St. 132. But see Tharp v. Com. 58 Id. 500.

<sup>3</sup> Physick's Estate, 2 Brews. 200.

<sup>4</sup> Gilmore's Estate, 14 P. L. J. 113; distinguishing Com. v. Nancrede, 32 Pa. St. 389, and cases *supra*.

<sup>5</sup> Skottowe v. Young, L. R. 11 Eq. 474.

<sup>6</sup> See 19 Abb. N. C. note, p. 232.

<sup>7</sup> See statutes (Appendix) N. Y., Penn., Conn., Md.

such dower is not subject to the tax, notwithstanding the fact that by agreement she takes less than the law would have allowed;<sup>1</sup> but where the legatee married decedent's son, but such son had died, and the legatee had subsequently married before decedent's death, she does not come within the term "widow," and the legacy to her is not, therefore, exempt.<sup>2</sup> The court said (page 441): "The testatrix did not die until after the second marriage of the devisee, and the property does not vest in and pass to her until testatrix's death. At that time she was not within the class of exempts, and not entitled to take the property clear of the tax."

On the other hand it has been held that the exemption from taxation to a devise, or a bequest in favor of the husband of a daughter, is unaffected by the circumstances of the death of the daughter occurring before that of the testator, her parent, as the word daughter would seem to include a deceased daughter.<sup>3</sup>

§ 8. *Next of kin, lineal and lawful descendants.*—By all the State statutes persons embraced within these terms are generally exempted. The term lawful or lineal descendants includes only the direct descendants of the testator or intestate, and does not include the children of the brothers and sisters of the decedent.<sup>4</sup>

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<sup>1</sup> Com's. App. 34 Pa. St. 204.

<sup>2</sup> Com. v. Powell, 51 Id. 438.

<sup>3</sup> Matter of McGarvey, 6 Dem. 145; s. c. 19 Abb. N. C. 233, note; Matter of Wolsey, 20 N. Y. St. Rep. 135.

<sup>4</sup> Matter of Miller, 5 Dem. 132; affd. 45 Hun, 244; Matter of Smith, 5 Dem. 90; Matter of Jones, Id. 30.



The share of a grandmother was held taxable in Pennsylvania under the Act of 1833, exempting father, mother, husband, wife, children and lineal descendants, there being no nearer kindred of the intestate than such grandmother, it being held that the next of kin under the act should be ascertained by rule of the civil and not of the canon law.<sup>1</sup>

But property devised to testator's daughter, in trust, for life, with power of appointment by will<sup>2</sup> in the life-tenant, which the daughter by will devised to her brothers and sisters and their children, being lineal descendants of her father, is not liable.<sup>3</sup>

And property bequeathed to an executor individually, but which, by agreement between him and the testatrix, was to be in trust for her brother, is exempt.<sup>4</sup>

§ 9. *Aliens, foreign legatees and non-residents.*—This subject has already been considered as to the constitutional questions involved,<sup>5</sup> and elsewhere with reference to questions of domicile and *situs*.<sup>6</sup> Under the statutes no tax is generally imposed on aliens as such save in Louisiana, where, however, the tax is only due by such alien heirs as become entitled to

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<sup>1</sup> McDowell v. Addoms, 45 Pa. St. 430; and see rules relative to collateral and lineal consanguinity under these acts discussed per Woodward, C. J.

<sup>2</sup> See Chapter VI, sec. 6.

<sup>3</sup> Com. v. Williams, 13 Pa. St. 29; Com. v. Sharpless, 2 Chest. Pa. 246; Com. v. Schumacher, 9 L. Bar. Pa. 199; Hackett v. Com. 102 Pa. St. 505.

<sup>4</sup> Matter of Farley, 15 N. Y. St. Rep. 727; *contra*, Cullen v. Atty.-Genl. L. R. 1 H. L. 890.

<sup>5</sup> Chapter II, secs. 15, 16.

<sup>6</sup> Chapter IV.

succession open in the State after the passage of the law.<sup>1</sup>

But while the law of that State imposes the tax upon non-resident aliens, and alien heirs, and citizens residing abroad, non-resident heirs who are citizens of any other State of the United States are exempt.<sup>2</sup>

Under these statutes it has been held that the word "estate" is synonymous with the word "successor."<sup>3</sup>

§ 10. *What estates or interests taxable; legacies under \$500, &c.*—The rule seems to be general that the tax is imposed, not upon the whole of decedent's estate, passing by will or intestate law, unless the whole descend to collaterals and be thus made taxable, but upon that specific part or interest passing to non-exempt persons, heirs, devisees or legatees<sup>4</sup> (the word "estate" in the act referring to the last named

<sup>1</sup> Succession of Oyon, 6 R. (La.) 504; Succession of Peyroud, 9 Id. 357.

<sup>2</sup> Louisiana v. Peydras, 9 A. (La.) 165; s. c. 18 Howard U. S. 192.

<sup>3</sup> N. O. v. Stewart's Estate, 21 A. (La.) 180.

<sup>4</sup> See Chapter VII, sec. 3; Matter of Howe, 112 N. Y. 103; affg. 48 Hun, 235, 245; overruling Matter of Chardavoyne, 5 Dem. 466; Matter of Cager, 111 N. Y. 443; Matter of Clark, 1 Con. Surr. Rep. 431; McVean v. Sheldon, 48 Hun, 136; overruling Matter of Miller, 5 Dem. 132. See Matter of Thompson, 14 N. Y. St. Rep. 387; Matter of McCready, 10 Id. 696; Matter of Smith, 5 Dem. 90; Matter of Robinson, Id. 92; Matter of Hopkins, 6 Id. 1; Matter of Howard, 5 Dem. 483; Matter of Jones, Id. 30; Com. v. Smith, 5 Pa. St. 144; Com. v. Smith, 20 Id. 104; Com. v. Kerchner, 24 W. N. C. 260. The words "being within the commonwealth," in the Penn. statutes, were held to refer to the property and not to the person of decedent, but by subsequent statute they were made to refer to both. Com. v. Smith, *supra*; *In re Short's Est.* 16 Pa. St. 63; Carpenter v. Com. 17 How. U.

persons), unless the testator direct that the tax be paid not by the taxable interest, but out of his general estate, in which event the executor must pay the tax.<sup>1</sup>

Many of these statutes exempt small legacies to collaterals from taxation; generally those which amount in value to not more than \$1,000.<sup>2</sup>

Under the New York statute, which exempts all estates from the tax that may be valued at a less sum than \$500, it has recently been held, contrary, it seems, to the general practice of the different Surrogates, that a legacy of that amount not by law payable until a year after decedent's death is not subject to the tax, as its "clear market value" at the time of death is less than \$500.<sup>3</sup>

If this rule be correct, as to which there is much doubt, it follows that only such legacies of that amount which are payable immediately upon decedent's death are taxable under this provision of the statute

In Pennsylvania, an estate which may be valued at less than \$250 is exempt. Under this clause of the statute it is held, contrary, it seems, to the New York cases,<sup>4</sup> that the word "estate" does not refer to the

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S. 461; *State v. Dalrymple*, 70 Md. 294; 17 Atl. 83; see *Com.'s App. (Bittinger's Est.)*, 129 Pa. St. 338.

<sup>1</sup> See Chapter VII, sec. 3; also *Thompson's Est.* 5 W. N. C. 19; *Shippen v. Burd*, 42 Pa. St. 461; *Horter's Est.* 1 Pears. 424; *Murphy's Est.* 4 P. C. R. 336; *Holbrook's Est.* 3 Id. 263; see *Com. v. Boyle*, 2 Del. Co. Rep. (Pa.), 335.

<sup>2</sup> *Supra*, p. 72, note 4.

<sup>3</sup> *Matter of Peck*, 30 N. Y. St. Rep. 209; 9 N. Y. Supp. 465; citing *Thorne v. Garner*, 113 N. Y. 198; *contra*, *Matter of Pond*, N. Y. Daily Reg. May 25, 1889; *Est. of Bird*, N. Y. Law Jour. July 28, 1890; see *Matter of Cager*, 111 N. Y. 343.

<sup>4</sup> *Supra*, p. 72.

interest of the legatee, but to the property of the decedent; hence, although the legacies are under that sum, if the total value of the estate exceeds \$250 such legacies are taxable, one of the reasons given being that otherwise a testator might divide a large estate into innumerable small legacies of less than \$250, and thus defeat the tax.<sup>1</sup>

§ 11. *Foreign real estate*.—Real estate situated in a foreign State, although owned by a citizen of the taxing State, unless directed by will to be converted into personalty, cannot be taxed by the latter State, as it is not within the jurisdictional power of one State to impose a succession tax upon real property beyond its jurisdiction.<sup>2</sup>

§ 12. *Legacies when exempt under Acts of Congress*.—The Act of Congress<sup>3</sup> imposing a tax upon legacies arising from personal property, does not apply to legacies arising from real estate, although the testatrix directed its sale for the purpose of paying the legacies. In limiting the scope of the law to legacies to personal property, the inference is that it was intended to exempt such as were payable from the proceeds of real estate.<sup>4</sup> So where money is received by claimants under a deceased person's will, by vir-

<sup>1</sup> *Com. v. Kerchner*, 24 W. N. C. 200; *King's Est.* 11 Phila. 27; *Com. v. Boyle*, 2 Del. Co. Rep. 335. See *Matter of Miller*, 5 Dem. 132.

<sup>2</sup> See Chapter II, sec. 5; also *Matter of Wolfe*, 19 N. Y. St. Rep. 263; *Miller v. Peo. sub nom. Lorillard v. People*, 6 Dem. 268; *Estate of Dewey*, N. Y. Law Jour. Oct. 21, 1889; *Com's. App. (Bittinger's Est.)*, 129 Pa. St. 336.

<sup>3</sup> July 1, 1862.

<sup>4</sup> *U. S. v. Watts*, 1 Bond, 581.

tue of a compromise contract between them and the executors, sanctioned by a court having jurisdiction, the money so received does not fall within the category of legacies or distributive shares in intestate estates which are subject to a Federal internal revenue tax.<sup>1</sup>

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<sup>1</sup> Page v. Rieves, 1 Hughes, 297. But see Bruce v. Smith, 13 Int. Rev. Rec. 54; *Ex parte* Stilwell, 59 L. I. R. 539.

## CHAPTER IV.

### ESTATES OF RESIDENT AND NON-RESIDENT DECEDENTS.

- § 1. General rules as to domicile and *situs*.
- 2. Conflict under these statutes.
- 3. Resident decedents, their heirs and legatees.
- 4. Non-resident decedents, their heirs and legatees :
  - (a) The English rule of *mobilia sequuntur personam*.
  - (b) Application of the rule in America.
  - (c) The rule as applied to tangible and intangible property.
  - (d) Where succession takes place for purpose of taxation.
- 5. Foreign legacies.
- 6. Rules where non-resident's debts exceed value of estate.

§ 1. *General rules as to domicile and situs*.—Perhaps some of the most complicated questions, arising under these laws, are those concerning the liability, for the payment of succession or legacy taxes, of estates or property, within the taxing State, belonging to non-resident or alien decedents and passing to their heirs, devisees or legatees by will or intestate law, and the liability of resident decedents, to pay the tax, where the property is situated abroad or in a foreign State. The law upon this subject is as yet but partly developed in this country.

Generally, with respect to personal property taxes, it is not necessary that the person and property should both be within the jurisdiction of the taxing State, but, in order to be taxable, it is sufficient

if either is, and it is said that the State, at its option, may impose the tax upon tangible property within its borders, irrespective of the residence or allegiance of the owner.<sup>1</sup>

These principles may be said, with some exceptions, to be applicable to collateral inheritance, legacy or succession taxes, and jurisdiction is conferred either by the fact of property or person being within the State or both.<sup>2</sup>

The legislature has the power, as we have already seen,<sup>3</sup> to impose these taxes, not only where they affect citizens, but also where non-residents or aliens claim by inheritance or will, property actually located within the State, and also personal property situated elsewhere but owned by a resident.<sup>4</sup>

Under general tax laws so far as non-residents are concerned it is held that such taxes are not a charge against the owner personally, but must be enforced against the property itself, and the State would seem to have no jurisdiction to assess the owner personally.<sup>5</sup>

§ 2. *Conflict under these statutes.*—But perhaps

<sup>1</sup> Cooley on Taxation, 2d ed. 55, 56.

<sup>2</sup> Com. App. (Bittinger's Est.), 129 Pa. St. 338; s. c. 18 Atl. Rep. 132; *In re Short's Est.* 16 Pa. St. 67; *St. v. Dalrymple*, 70 Md. 294; s. c. 17 Atl. Rep. 82.

<sup>3</sup> Chapter II, sec. 16.

<sup>4</sup> *St. v. Dalrymple*, *supra*; *Alvaney v. Powell*, 2 Jones' Eq. 51; *Thompson v. Advocate-Gen.* 12 C. & F. 1; *In re Cigala*, L. R. 7 Chanc. Div. 356.

<sup>5</sup> Cooley on Taxation, 2d ed. 21; citing *People v. Supervisors*, 11 N. Y. 563; *Hilton v. Fonda*, 86 Id. 339. As to when property sent here for investment by foreigners is exempt from taxation after owner's death, see *Estate of Smith*, 17 N. Y. St. Rep. 783.

no subject has afforded more ground for contention and conflict, in the courts of England and America, than the one concerning the liability of personal property of non-resident or alien decedents, within the taxing State.<sup>1</sup>

And the question has generally been, whether the domicile of the owner, or the *situs* of the property, should be taken as the governing principle or basis for ascertaining the liability to such taxes, some courts adopting the domicile and others the *situs* as the ground of such liability.

This conflict will be found to have become more or less complicated by several considerations, among others—

(a) By the application to a greater or less extent of the maxim *mobilia sequuntur personam*. This rule has been applied fully in the English courts under the legacy act, and in a restricted sense under the succession act.

(b) By the distinction made, under this maxim, in certain American courts, especially in Pennsylvania, between tangible and intangible property, which will be hereafter considered.

(c) And on the other hand, by the application, in many States, of doctrines of public policy, so as to tax non-resident or alien estates equally with those belonging to residents, and thus prevent discrimination between the two classes.<sup>2</sup>

(d) By questions of construction naturally

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<sup>1</sup> See Layton on Succession and Legacy Duties, introduction to 5th edition.

<sup>2</sup> State v. Dalrymple, Alvany v. Powell, *supra*, are the leading cases.



arising in different courts in construing different statutes.

The principles enunciated by the courts under these statutes, concerning the liability of the estates of resident and non-resident or alien decedents, will be treated in the order following :—

§ 3. *Resident decedents, their heirs or legatees.*—While, under property tax laws, it is not the general rule to tax the personalty of a resident of the taxing State, the actual *situs* of which is in a foreign State or country;<sup>1</sup> this would seem to be constantly done under legacy or succession tax laws, and here the fiction of *mobilia sequuntur personam* fully applies, as the property is usually drawn or remitted to the owner's domicile for administration and distribution, unless detained at the *situs* by creditors.<sup>2</sup>

Hence, there would seem to be no question, among any of the authorities, that such personal property of a deceased resident, wherever situated, and the real or leasehold estate within the State of his domicile passing to persons subject to the tax, and whether such personal property be of a tangible or intangible nature, are taxable under these laws. This rule, under the fiction of law, applies both against resident and non-resident legatees or devisees of such a decedent, as to personalty, wherever it be situated.<sup>3</sup>

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<sup>1</sup> Hoyt v. Commissioners, 23 N. Y. 224; People v. Smith, 88 Id. 576; People v. Gardner, 51 Barb. 352; People *ex rel.* Darrow v. Coleman, 119 N. Y. 137.

<sup>2</sup> Kintzing v. Hutchinson, 34 Leg. Int. 365; Bruce v. Bruce, 2 Bos. & P. 229; *In re* Short's Est. 16 Pa. St. 66; McKeen v. Northampton County, 49 Id. 519; and cases cited, sec. 1, *supra*.

<sup>3</sup> Tyson v. St. 28 Md. 577; Mager v. Grima, 8 Howard, 490;

The only exception to this rule seems to be, as has been said, where the real estate of the decedent is situated in a foreign country. Being thus beyond the jurisdiction of the State of domicile, such real property cannot be reached under these laws for the purpose of taxation, even though devised to a resident of the taxing State.<sup>1</sup>

Any law in the nature of a direct tax having this object in view would, it seems, infringe upon constitutional grounds and be unenforceable by the

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*Eyre v. Jacob*, 14 Grat. 422; *St. v. Dalrymple*, 17 Atl. 82; s. c. 70 Md. 294; *Com.'s. App. (Bittinger's Est.)*, 129 Pa. St. 338; s. c. 18 Atl. 132; *In re Short's Est. supra*; *Orcutt's App.* 97 Pa. St. 184; *Com. v. Smith*, 5 Id. 143; *Alexander's App.* 3 P. L. J. (Clark), 87; *U. S. v. Hunnewell*, 13 Fed. Rep. 617; *Stokes v. Ducroz*, *Layton's Leg. & Succ. Duties*, 7th ed. 20; *Chatfield v. Berchtoldt*, L. R. 7th Ch. App. 192; *In re Ewin*, 1 C. & J. 151; *Atty.-Gen. v. Napier*, 6 Exch. 217; *Forbes v. Steven*, L. R. 10 Eq. 178; *Custance v. Bradshaw*, 4 Hare, 315; *In re Coales*, 7 M. & W. 390; *Arnold v. Arnold*, 2 Myl. & Cr. 256; *In re Cigala*, 1878, L. R. 7 Chanc. Div. 351; *Matter of Enston*, 113 N. Y. 181; see, also, *Cooley on Taxation*, 2d ed. 44, 56; *Alvaney v. Powell*, 2 Jones' Eq. 51; *St. v. Brevard*, *Phillip's Eq. Rep.* 141; *Com. v. Brenner*, 2 Leg. Gaz. (Pa.), 413; *People v. Commissioners*, 51 Hun, 312.

In *Dallinger v. Rapello*, 14 Fed. Rep. 32, it was held, that the personal property of a deceased inhabitant was not taxable within the State, after the appointment of an executor, and before distribution, where the property was not within the State, and neither the executor nor any person in interest had a domicile there. The decision, however, was on the construction of the statute, and not upon the point of State power. See *Cooley on Taxation*, 2d ed. p. 55, note.

<sup>1</sup> Cases cited, *supra*; *Miller v. Com.* 111 Pa. St. 321; *Lorillard v. People*, 6 Dem. 268; *Drayton's App.* 61 Pa. St. 172; *Com. v. Coleman*, 52 Id. 468; *Hood's Est.* 21 Id. 106; *Kintzing v. Hutchinson*, U. S. Circ. Ct. 34 Leg. Int. 365; *Matter of Wolfe*, 19 N. Y. St. Rep. 263; *Estate of Dewey*, N. Y. Law Jour. Oct. 21, 1889.

State,<sup>1</sup> but it would seem that the State has the power to impose a succession tax upon every citizen of the State who succeeds to either real or personal property, from whatever source received, if it is not in the nature of a direct tax.<sup>2</sup> And where the will of a decedent directs that real property, situated abroad, shall be converted into personalty, it may then be taxed by the laws of such decedent's domicile, as the tax is in reality considered as being imposed upon the proceeds passing under the will.<sup>3</sup>

And in England, as regards a British subject, the succession duty has even attached to foreign real estate used in a copartnership as an asset, a member of which firm was a domiciled Englishman.<sup>4</sup>

A mere authority to the executors, however, to sell such foreign real estate, without any positive direction to that effect contained in the will, does not warrant the taxing of the proceeds, notwithstanding that the executors bring them within the State and mix the proceeds with other money belonging to the estate.<sup>5</sup>

The court said :<sup>6</sup> " We must consider the case as if this Minnesota land had been all the estate the testator had, and as if it has been sold under the power

<sup>1</sup> Com's. App. (Bittinger's Est.), 129 Pa. St. 338; 18 Atl. 132; S. C. 24 W. N. C. 273; and cases cited Chapter II, sec. 5. But see Est. of Dewey, *supra*.

<sup>2</sup> Com's. App. (Bittinger's Est.), *supra*.

<sup>3</sup> Miller v. Com. 111 Pa. St. 321; Matter of Howard, 5 Dem. 486.

<sup>4</sup> Forbes v. Steven, L. R. 10 Eq. 178.

<sup>5</sup> Drayton's App. 61 Pa. St. 172; Com. v. Coleman, 52 Id. 468; Hood's Est. 9 Harris, 106.

<sup>6</sup> Drayton's App. *supra*

and the proceeds distributed abroad. Surely the bringing them into this State and depositing them in the bank account of the executors along with other funds of the estate can make no difference. The amount is certain, and they needed no ear mark to distinguish them from other money of the testator. Hood's estate<sup>1</sup> shows clearly that if the property is not liable to tax at the death of the testator, wherever it is, the bringing of it into the State does not make it so." The domicile of any one is presumed to continue until it is changed by acquiring a domicile elsewhere. No temporary sojourn in a foreign country will effect such change.<sup>2</sup>

So the declaration of a decedent in his will, made five years before the tax was imposed, that he was a resident of New York is controlling in the absence of positive proof to the contrary.<sup>3</sup>

Under the acts of Congress, it was held, that where the testator had abandoned his residence in this country, and taken up a foreign domicile, the legacies provided for in his will were not subject to the tax, but upon the express ground that there was no intention to tax non-resident estates.<sup>4</sup>

But under the English law the estates of English subjects dying abroad where they intended making their domicile are liable to the legacy tax unless

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<sup>1</sup> *Supra*.

<sup>2</sup> As to what constitutes such change, see Hood's Estate, 9 Harris, 106, and *post*, p. 83.

<sup>3</sup> Matter of Hughes, N. Y. Daily Reg. July 27, 1889.

<sup>4</sup> U. S. v. Morris, 27 Fed. Rep. 341; U. S. v. Hunnewell, 13 Id. 617, and note, p. 618; San Francisco v. Mackey, 22 Fed. Rep. 602.

there is evidence also showing that they had actually obtained a foreign domicile at the time of death.<sup>1</sup>

And notwithstanding such change of domicile is effected, in such event certain estates may be, nevertheless, liable to succession duty.<sup>2</sup>

§ 4. *Non-resident decedents, their heirs and legatees.*

(a) *The English rule, mobilia sequuntur personam.*—We have already seen<sup>3</sup> that two statutes in England regulate the duty or tax upon gifts, legacies and successions. While these statutes were evidently meant to and do cover almost every conceivable form of transfer, whether *inter vivos*, or by will, or intestacy, curiously enough both of these enactments, especially the legacy act, have been found to be most incomplete and defective so far as the liability of the personal property within English territory of non-resident and alien decedents is concerned, and notwithstanding it is conceded in cases involving such liability that Parliament has the undoubted power to impose these taxes upon the estates of such foreign decedents,<sup>4</sup> yet by force of a construction placed upon these statutes under the fiction of law, the intention on the part of the legislature to

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<sup>1</sup> *Udney v. Udney*, 1 Sco. App. 1869, 441; *Atty.-Gen. v. Dunn*, 6 M. & W. 526; *Atty.-Gen. v. Napier*, 6 Exch. 217; *Hamilton v. Dallas*, L. R. 1 Ch Div. 257; *Atty.-Gen. v. Wahlstatt*, 3 H. & C. 374; *In re Tootall's Trust*, L. R. 23 Chanc. Div. 532; *In re Capdevielle*, 2 H. & C. 985.

<sup>2</sup> *Atty.-Gen. v. Wahlstatt*, and *In re Capdevielle*, *supra*.

<sup>3</sup> Chapter I.

<sup>4</sup> *Wallace v. Atty.-Gen.* L. R. 1 Chanc. App. 1, per Lord Chancellor Cranworth; *In re Badart*, L. R. 10 Eq. 288.

tax such estates under the legacy act has been denied by all the judges in the House of Lords.<sup>1</sup>

On the other hand, under the succession act, while with respect to simple legacies the same rule has been adopted, personal estates held in trust in England by English trustees, subject to local courts, have been taxed, notwithstanding all the parties were aliens.<sup>2</sup>

The result of a construction which thus exempted foreign estates in England from the tax under the legacy act, arising from a strict adherence to the maxim *mobilia sequuntur personam*, and the relaxation of the rule under the succession act has obviously been to cause confusion and a want of harmony among the cases under these statutes, and, as we shall hereafter see, has provoked judicial criticism both in that country,<sup>3</sup> and in America, where in many instances these cases have been substantially rejected as authorities.<sup>4</sup>

Under the legacy act, it was originally held, that legacies left by a person domiciled in a foreign coun-

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<sup>1</sup> *Thompson v. Advocate-Gen.* 12 C. & F. 1; overruling *Atty.-Gen. v. Cockerill*, 1 Price, 165; *Atty.-Gen. v. Beetson*, 7 Price, 560; and see these cases criticised in *St. v. Dalrymple*, 70 Md. 294; s. c. 17 Atl. Rep. 82; *Alvaney v. Powell*, 2 Jones' Eq. 51; *Matter of Lawr. G. Clark*, 9 N. Y. Supp. 444.

<sup>2</sup> *In re Lovelace*, 4 DeG. & J. 340; *Re Wallop's Trust*, 1 D. J. & S. 656.

<sup>3</sup> *Lyall v. Lyall*, 1872, L. R. 15 Eq. 1; criticising *Wallace v. Atty.-Gen.* *supra*.

<sup>4</sup> *St. v. Dalrymple*, 70 Md. 294; s. c. 17 Atl. 82; *Alvaney v. Powell*, 2 Jones' Eq. 51; *Matter of Lawrence G. Clark*, 9 N. Y. Supp. 444; *Matter of Romaine*, N. Y. Law Jour. March 19, 1890; *Matter of Vinot*, 7 N. Y. Supp. 517; see *Matter of Enston*, 113 N. Y. 183.

try, where the will was proved and administration of the estate had, if remitted to England to the legatees, were liable to the tax upon the theory that there was a new administration there.<sup>1</sup>

The principle announced in the earlier cases under the legacy acts, however, was not strictly followed where the assets of a foreign estate were brought into the kingdom after decedent's death to pay legatees or for any other purpose, for the court held that it was not liable upon the grounds stated by Lord Cottingham that the act referred merely to persons and wills and personal estates within the limits of the kingdom.<sup>2</sup> None of these cases made the distinction between domicile, residence or *situs*<sup>3</sup> until 1830, when<sup>4</sup> the doctrine was first broached that the true criterion whether the parties were liable to legacy duty depended upon the fact whether the testator at the time of his death was domiciled in England, and the maxim that the personal property followed the person of the owner was adopted.<sup>5</sup>

Finally, in 1845, the House of Lords declared, applying this maxim in its full force, that an English

<sup>1</sup> Atty.-Gen. v. Cockerill, 1 Price, 165; Atty.-Gen. v. Beetson, 7 Id. 819; see Alexander's Est. 3 P. L. J. (Clark), 87; Matter of Romaine, *supra*. But probate duty it was held would not have been payable. Atty.-Gen. v. Hope, 1830, 1 Crompt. M. & R. 520; Atty.-Gen. v. Napier, 1851, 6 Exch. 217; Forbes v. Steven, L. R. 10 Eq. 186.

<sup>2</sup> Arnold v. Arnold, 2 Myl. & Cr. 270; Atty.-Gen. v. Forbes, 2 C. & F. 48; s. c. Atty.-Gen. v. Jackson, 8 Bli. 15; but see Atty.-Gen. v. Campbell, 1872, L. R. 5 H. L. 524.

<sup>3</sup> Atty.-Gen. v. Napier, 6 Exch. 217.

<sup>4</sup> *In re Ewin*, 1 C. & J. 151, following Bruce v. Bruce, 2 Bos. & P. 229; see, also, *In re Bruce*, 2 C. & J. 436.

<sup>5</sup> Atty.-General v. Napier, *supra*.

subject, domiciled in a British Colony, who was at the time entitled to a debt due in Scotland, and whose administrators took out letters in that country, collected the debt, and paid the legatees with the proceeds in the latter country, was not liable to legacy duty.<sup>1</sup>

All the judges agreed that the statute, notwithstanding its general words, "every legacy given by any will or testamentary instrument of any person" was limited and did not extend to the will of *any person* who at the time of his death was domiciled out of Great Britain, whether the assets were locally situate within England or not, and that the debt only formed part of the personal property of the testator, and that the liability to the duty did not depend on the executor proving the will in England nor upon his administration there but the question, according to the Lord Chancellor, turned upon the meaning of the statute limiting its operation to Great Britain.<sup>2</sup>

So far as this doctrine applied to a British subject, Lord Brougham,<sup>3</sup> who seemed to have entertained doubts upon the question, said "I believe that if the Chancellor of the Exchequer, who introduced this bill into Parliament, had been asked his opinion, he would have been a good deal surprised to hear that he was not to have his legacy duty on such a fund as this where the testator was a British-born subject and had merely acquired a foreign domicile," and he observed that the doctrine of domicile was of

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<sup>1</sup> Thompson v. Advocate-Gen. 12 C. & F. 1.

<sup>2</sup> Id. 20.

<sup>3</sup> Id. 28.



recent growth and that neither the legislature nor the judges thought much of it.

As a necessary consequence or converse of this rule it was held that where a testator died domiciled in England, though residing temporarily abroad at the time of death, the duty was payable on his personal estate though situated abroad.<sup>1</sup>

So the legacy duty was held payable upon the share of a deceased partner, a domiciled Englishman, in the proceeds of freehold property abroad used there for the purposes of the partnership, and forming an asset thereof, upon the ground that as between the partners the real property was in law considered as personalty.<sup>2</sup>

The same rule was subsequently considered and applied<sup>3</sup> with reference to the succession duty,<sup>4</sup> where there were legacies payable under the will of a foreigner to legatees in England, the estate there consisting both of real and personal property in the hands of English executors. Lord Chancellor Cranworth, in holding that there was no intention to tax such estate, and referring to certain practical difficulties in the way of such taxation, said: "The statute was passed only about eight years after the decision of the House of Lords in *Thompson v. Advocate-*

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<sup>1</sup> *Atty.-Gen. v. Napier*, 6 Exch. 217; Lord Cranworth, in *Wallace v. Atty.-Gen.* L. R. 1 Chanc. Appeal, 1; see, also, *Atty.-Gen. v. Dunn*, 1840, 6 M. & W. 526; *In re Coales*, 1841, 7 M & W. 390; *Arnold v. Arnold*, 2 Myl. & Cr. 256.

<sup>2</sup> *Forbes v. Steven*, 1870, L. R. 10 Eq. 178; *Custance v. Bradshaw*, 4 Hare, 315.

<sup>3</sup> *Wallace v. Atty.-Gen.* *supra*.

<sup>4</sup> 16 and 17 Vict. ch. 51.

General,<sup>1</sup> and when the non-liability to legacy duty of legatees under the will of persons not domiciled in this country had been fully established after having for a long time previously given rise to much discussion. I can hardly think that the legislature intended by a side wind, as it were, and without any preamble of its intention, to do what without exciting attention would practically operate as a reversal of that which after frequent discussions in the different courts had established the rights of persons claiming as legatees under foreign wills. Parliament has no doubt the power of taxing the successions of foreigners to their personal property in this country, but I can hardly think that we ought to presume such an intention unless it is clearly stated."<sup>2</sup>

But what would seem to be a wide departure from the rule of domicile as originally declared, and as conflicting with this case, had been previously made in several decisions and the court was compelled to declare that its decision did not conflict with these cases.<sup>3</sup>

Hence under the succession act, an exception was established, as regards a class of cases in which personal property was held in trust, or under marriage settlements, by English trustees, subject to English courts, notwithstanding, in some instances, all the beneficiaries were aliens residing or dying abroad,

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<sup>1</sup> 12 C. & F. 1.

<sup>2</sup> To same effect, *Matter of Enston*, s. c. *People v. Sherwood*, 113 N. Y. at page 181; *Matter of Tulane*, 51 Hun, 213; both of which were decided under the New York act of 1885.

<sup>3</sup> See *In re Lovelace*, 1870, 4 DeG. & J. 340; *In re Wallop's Trust*, 1864, 1 D. J. & S. 656.

the mere legal title being vested in the trustees. And it was held that the property in England was liable to the succession tax though not to the legacy duty.<sup>1</sup>

*In re Cigala*, where the exception was followed, Jessel, M. R., said: "On what ground is it contended that no duty is payable? It is said that the English government does not tax foreigners, but only Englishmen. As a proposition of law I am not prepared to assent to that. There are very many cases in which the English government does tax foreigners. We have a very familiar instance in the case of a foreigner with a British domicile dying intestate as to personal estate, leaving foreign next of kin or dying testate as to personal property and giving the whole of it to foreigners. There the next of kin or residuary legatee pays duty out of the property, though the personal property in question may be situate abroad, the right to the property being the right of the testator or intestate, for, according to the rule of law, *mobilia sequuntur personam*, the right to the property is a right governed by the domicile of the testator or intestate. In that case it is quite clear that a foreigner is taxed by the English law, though the property is actually situated abroad, and, therefore, it is not true, as a universal rule, that English legislation does not tax foreigners."

The doctrine thus established under the succes-

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<sup>1</sup> *In re Lovelace*, *supra*; *In re Wallop's Trust*, *supra*; see, also, *In re Cigala*, L. R. 7 Chanc. Div. 356; Atty.-Gen. v. Fitzjohn, 1857, 2 H. & N. 465; Lyall v. Lyall, 1872, L. R. 15 Eq. 1; criticising *Wallace v. Atty.-Gen.* L. R. 1 Ch. App. 1; *In re Badart*, L. R. 10 Eq. 288; see, also, Atty.-Gen. v. Campbell, 1872, L. R. 5 H. L. 524; *In re Smith's Will*, 1864, 12 W. R. 933.

sion act, though more in accordance with reason and justice, has been criticised as being in conflict with the rule announced under the legacy act. "I must state," says Romilly, M. R.,<sup>1</sup> "that it appears to me that the distinction drawn between the two statutes is extremely thin, and that the arguments against legacy duty as stated in *Thompson against Advocate-General*,<sup>2</sup> apply with equal force to the words of this statute as regards, at all events, property locally situated abroad, and it is to be remembered that that case was not heard *ex parte*, but was twice argued before the House of Lords, and that it was not only the opinion of that tribunal consisting of Lords Lyndhurst, Brougham and Campbell, but it was so after taking the opinion of Chief Justice Tindal and seven other judges."

And recently it has been adjudged that the personal property bequeathed by a foreigner not domiciled in England while not in the first instance liable to legacy or succession duty, becomes liable where the executor directed to collect foreign property invested in England has discharged the duty imposed upon him, and any subsequent devolution of it, is liable to succession duty, though the party on whom it may devolve be, like the testator, domiciled abroad, and that the liability to legacy duty of real estate in England is not affected by domicile.<sup>3</sup>

And the rule has recently been strongly reiter-

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<sup>1</sup> *Lyall v. Lyall*, 1872, L. R. 15 Eq. 1.

<sup>2</sup> 12 C. & F. 1.

<sup>3</sup> *Chatfield v. Berchtoldt*, L. R. 7 Ch. App. 192; *Atty.-Gen. v. Campbell*, 1872, L. R. 5 H. L. 524; see, also, *In re Badart*, L. R. 10 Eq. 288.

ated in England under the legacy act by Mr. Justice Chitty, that the question of liability to the duty depends solely upon that of domicile of the testator or intestate at the time of death, and that the circumstance that the personal property was locally situate in that country, or sent there to be paid to legatees were immaterial, and that the fact that the will was not proved in England made no difference when the domicile was English.<sup>1</sup>

So English subjects dying abroad are liable to the legacy tax unless it clearly appears that they had an actual domicile in a foreign State at the time of death.<sup>2</sup>

And a foreigner acquiring a domicile in England becomes liable to the duty.<sup>3</sup>

Under the succession act the word "property" has been held to include stocks and shares in foreign governments transferable abroad, the certificates for which were merely held in England by trustees.<sup>4</sup>

(b). *Application of the rule in America.*—We have already discussed the question as to the power of the State to impose succession or legacy taxes upon property within its jurisdiction passing by will

<sup>1</sup> *In re Tootall's Trust*, L. R. 23 Ch. Div. 532.

<sup>2</sup> *Udney v. Udney*, 1 Sco. App. 1869, 441; *Atty.-Gen. v. Dunn*, 6 M. & W. 526; *Atty.-Gen. v. Napier*, 6 Exch. 217; *Atty.-Gen. v. Wahlstatt*, 3 H. & C. 372; *In re Capdeveille*, 2 Id. 985; *In re Tootall's Trust*, L. R. 23 Chanc. Div. 532.

<sup>3</sup> As to what facts are sufficient to show a change of domicile, see cases cited *supra*, and *Hamilton v. Dallas*, L. R. 1 Ch. Div. 257.

<sup>4</sup> *In re Cigala*, L. R. 7 Chanc. Div. 356; *contra*, *Matter of Enston*, 113 N. Y. 181; *Orcutt's App.* 97 Pa. St. 185.

or intestate law.<sup>1</sup> And while the administration and distribution of the personal estate of a non-resident decedent is regulated and passes under the law of the owner's domicile, in this country the maxim of *mobilia sequuntur personam* has not been adopted or applied in its full force as against the State upon questions of taxation, in fact, in some cases it has been entirely rejected as wholly inapplicable.

In some States this result has been reached either by a construction placed upon the statutes on grounds of public policy, favoring equality and to prevent unjust discrimination between estates of resident and non-resident decedents, and in others by express legislation, and the tax has been imposed upon both the real and personal property, tangible and intangible, of non-resident or alien decedents actually within the taxing State at the time of death, whether or not there be legatees or heirs within the State. In such cases the theory seems to be that for the purposes of this tax the succession is deemed to take place under the law of the taxing State, in reaching which result the courts have leaned towards the actual or real *situs* of property, having a visible and tangible existence, rather than to the mere domicile of the owner.

Such would now seem to be the law of Maryland, North Carolina, New York and Connecticut.<sup>2</sup>

In the latter State the tax under a very compre-

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<sup>1</sup> See Chapter II, sec. 18; *State v. Dalrymple*, 70 Md. 294; *Wallace v. Atty.-Gen.* 1 Ch. App. 1; *Alvaney v. Powell*, 2 Jones' Eq. 51; *Matter of Enston*, 113 N. Y. 184; *Matter of McPherson*, 104 Id. 316; *Com. App. (Bittinger's Est.)*, 129 Pa. St. 338.

<sup>2</sup> Real and leasehold estate in England is taxed irrespective of domicile. *Chatfield v. Berchtoldt*, L. R. 7 Ch. App. 192, and p. 87, *supra*.

hensive statute is expressly applied to tangible and intangible property.<sup>1</sup>

The State has power to give tangible personal property a special *situs* for the purpose of taxation.<sup>2</sup>

In North Carolina the question was early considered under a statute providing for a tax upon the descent or bequest of real estate and personal property passing to strangers or collateral kindred. In that case<sup>3</sup> the decedent was a foreigner and died abroad intestate, leaving property in the State. The authorities under the English legacy act were considered and rejected, and it was held, that the principle, by which a distinction was made between personal property and real estate, so that in regard to the former a construction depending upon the domicile of the owner was adopted, was based upon a fiction that had no application to questions of revenue, but merely applied to the distribution of the personal estates of deceased persons, and it was claimed that it never had any application where the rights of creditors were concerned.<sup>4</sup>

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<sup>1</sup> Pub. Law Connecticut, 1889, ch. clxxx, see Appendix. No decision seems to have been made, as yet, construing this statute. *Alvaney v. Powell*, 2 Jones' Eq. 51; *St. v. Brevard*, Phillip's Eq. 141; *St. v. Brim*, 4 Jones' Eq. 301; *St. v. Dalrymple*, 70 Md. 294; 17 Atl. Rep. 82; *Matter of Enston*; s. c. *People v. Sherwood*, 113 N. Y. 183; *Matter of Vinot*, 7 N. Y. Supp. 517; *Matter of Lawrence G. Clark*, 29 N. Y. St. Rep. 650; 9 N. Y. Supp. 446; *Matter of Romaine*, N. Y. Law Jour. Mch. 19, 1890; *Laws of N. Y.* 1887, ch. 713, as amending Law 1885, ch. 483, Appendix.

<sup>2</sup> *Cooley on Taxation*, 2d ed. 23; citing *Am. Coal Co. v. Comm.* 59 Md. 185; *Balt. v. R. R. Co.* 57 Id. 31.

<sup>3</sup> *Alvaney v. Powell*, 1854, *supra*; criticising *Thompson v. Advocate-Gen.* 12 C. & F. 1, and other English cases.

<sup>4</sup> *Story's Conflict of Laws*, 354; *Moye v. May*, 8 Ire. Eq. 131.

Pearson, J., said,<sup>1</sup> "The notion upon which the principle of the domicile is based that personal property attends the person and is where the owner lives is a mere fiction, and its very restricted application rests upon the comity of nations, but in collecting debts and taxes we must proceed upon the fact and consider the property as being where it actually is, in other words, the *situs* of the property must be the governing principle."<sup>2</sup>

Precisely the same views have been announced in New York under general tax laws.<sup>3</sup>

So recently the question has been considered under the Maryland statute,<sup>4</sup> with reference to the liability of a non-resident decedent, who at the time of his death owned certain stocks, bonds and cash, proceeds of the estate of his deceased brother in that State, and whose legatee, a stranger to the blood, resided outside of the State. McSherry, J., said: "No reason has been assigned or can be suggested why the broad language of the statute and the evident design of the legislature should be so narrowed and restricted as to exempt from this tax the estate of a non-resident *actually here*, notwithstanding that same property may, for other purposes, be treated as con-

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<sup>1</sup> Page 57.

<sup>2</sup> That the fiction is simply based on considerations of comity, see *Catlin v. Hull*, 21 Vt. 158; approved in *Hoyt v. Comm's.* 23 N. Y. 232; Whart. Private International Law, secs. 11, 13-297; *Green v. Van Buskirk*, 7 Wall. 150, *Hervey v. Locomotive Works*, 93 U. S. 664; *Lewis v. Woodford*, 58 Tenn. 25; *Birtwhistle v. Vardill*, 3 B. & C. 438-451.

<sup>3</sup> *Hoyt v. Comm's.* *supra*; *Graham v. Bank*, 84 N. Y. 400; see *People ex rel. Darrow v. Coleman*, 119 N. Y. 139.

<sup>4</sup> *St. v. Dalrymple*, 70 Md. 294; s. c. 17 Atl. Rep. 82.



structively elsewhere. If we adopt the view insisted on by the appellees it will result in a discrimination in favor of non-residents and against our own citizens, a discrimination, too, which the legislature certainly never intended to make, and for which no warrant can be found in the plain letter of the statute. In permitting property within the State on the death of its owner to pass by devise or descent or distribution, the legislature has seen fit where strangers or collateral kindred received it, to exact as the condition upon which that privilege is granted the tax in question. The imposition and collection of the tax, therefore, cannot depend upon the mere incidental residence of the owner."<sup>1</sup>

The court distinguished the English cases upon the ground that there was no intention as declared in those cases, on the part of the legislature, to impose the tax on the estates of alien or non-resident decedents.<sup>2</sup>

And the same criticism applies to other cases decided under these statutes, that there was no intention to tax such non-resident property, and the result in such cases will be found to be predicated solely upon this ground, and the fiction of law thus held applicable.<sup>3</sup>

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<sup>1</sup> And see opinion Woodward, C. J. Pa. Sup. Ct. Foreign Bond Tax Cases, 15 Wall. 305, and cases cited *supra*.

<sup>2</sup> Citing and reviewing *Bank v. Sharp*, 53 Md. 521; *Orcutt's Appeal*, 97 Pa. St. 179; *Atty.-Gen. v. Hope*, 1 Cromp. M. & R. 530; *Atty.-Gen. v. Cockerill*, 1 Price, 165; *Same v. Beetson*, 7 Id. 560; *Thompson v. Advocate-Gen.* 12 C. & F. 1; *Wallace v. Atty.-Gen.* L. R. 1 Chanc. App. 1.

<sup>3</sup> *U. S. v. Hunnewell*, 13 Fed. Rep. 617; *U. S. v. Morris*, 27 Id. 341. See *Com. v. R. R. Co.* 27 Grat. 354; *Orcutt's App.* 97

(c) *The rule as applied to tangible and intangible property.*—While the fiction has not been followed in some States upon grounds of public policy, and has been overthrown in others by statute, it becomes important to notice the distinction which has been made in this country—but which does not seem to exist in England—between tangible and intangible personal property, because out of this distinction has arisen the main conflict and difference in some of the States under these laws as to the taxability of what is often termed purely intangible personal property, such as bonds, certificates of stock, notes, mortgages, debts and the like. In Connecticut, we have seen, the statute expressly includes both tangible and intangible property, but no decision seems to have been made construing this provision.<sup>1</sup>

It is not always easy to determine what comes within the definition of the terms tangible and intangible.<sup>2</sup>

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Pa. St. 185; Del Busto's Est. 23 W. N. C. 111; Bacon's Est. 3 Del. Co. Rep. 603; Matter of Tulane, 51 Hun. 213; Matter of Enston, 113 N. Y. 181, where Andrews, J., said: "That the fiction must prevail unless there is something in the policy of the statute or its language which shows a different legislative intent." But see Hoyt v. Comm. 23 N. Y. 232, and cases *supra*, p. 94.

<sup>1</sup> Public Law Conn. 1889, ch. clxxx, Appendix. The State has power to impose a tax upon a debt due from a resident of another State to a citizen of the taxing State, although the debt is secured by a mortgage upon lands in the State where the debtor resides. Kirtland v. Hotchkiss, 100 U. S. 498.

<sup>2</sup> We give a few cases defining what has been considered tangible and intangible property under legacy and general tax laws where non-resident decedents are concerned.

(a) *Intangible.*—Debts, *i.e.*, mortgages, R. R. bonds, certificates of stock (Foreign Bond Tax Cases, 15 Wall. 300, 324; Kirtland v.

In England, under the succession act, the word "property" includes the shares of stocks of foreign governments and corporations within the kingdom which are transferable abroad.<sup>1</sup> Many of the statutes by express provision include the transfer of stocks by foreign executors. Such a statute is enforced in Pennsylvania,<sup>2</sup> but a similar provision is held unenforceable in New York.<sup>3</sup>

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Hotchkiss, 100 U. S. 498; *San Francisco v. Mackey*, 22 Fed. Rep. 602; *Com. v. R. R. Co.* 27 Grat. 354; *Goldgart v. People*, 106 Ill. 25; *Latrobe v. Balt.* 19 Md. 13; *Com. v. Standard Oil Co.* 101 Pa. St. 119; *Matter of Enston*, 113 N. Y. 181; *Del Busto's Est.* 23 W. N. C. 111; *Bacon's Est.* 3 Del. Co. Rep. 603; *Com's. App.* 11 W. N. C. 492; *Kintzing v. Hutchinson*, 34 Leg. Int. 368; government and State bonds and county stock, *Orcutt's App.* 97 Pa. St. 185; *Del Busto's Est.* 23 W. N. C. 111; *Com's. App.* 11 Id. 494; *Alexander's Est.* 4 Penn. L. J. 87.

(b) *Tangible property*.—Debt owing resident of taxing State (*Kirtland v. Hotchkiss*, 100 U. S. 498), earnings set apart to pay interest (*R. R. Co. v. Collector*, 100 U. S. 595; *U. S. v. R. R. Co.* 106 U. S. 327; *Com. v. R. R. Co.* 27 Grat. 344), bonds, certificates of stock and money (*Am. Coal Co. v. Com.* 59 Md. 185; *Balt. v. R. R. Co.* 57 Md. 31; see *Catlin v. Hull*, 21 Vt. 158, and case cited *supra*, p. 94; *State v. Dalrymple*, 70 Md. 294; s. c. 17 Atl. 82), government, State and municipal bonds, etc. (*Foreign Bond Tax Cases*, 15 Wall. 324; *In re Cigala*, L. R. 7 Ch. Div. 356; *In re Ewin*, 1 C. & J. 151), bank and other notes (*Foreign Bond Tax Cases*, 15 Wall. 324; *Osgood v. McGuire*, 61 N. Y. 529).

<sup>1</sup> Per Jessel, M. R., *In re Cigala*, 1878, L. R. 7 Chanc. Div. 351. But in *Matter of Enston*, 113 N. Y. 181, where the maxim was applied, the court said: "The certificates are in no general sense property; they simply represent interest in the corporations," etc. *Orcutt's App.* 97 Pa. St. 197.

<sup>2</sup> *Scott on Intestate Law* Pa. 1871, p. 547; *contra* *Kintzing v. Hutchinson*, 34 Leg. Int. 365.

<sup>3</sup> *Matter of Enston*, 113 N. Y. 180.

As we have seen, upon grounds of public policy, that the taxing State ought not to discriminate against its own citizens in favor of non-residents, and in some States, by express enactment, both tangible and intangible property within the State has been held liable to this tax, and so, under general tax laws, taxes have been imposed where such intangible property, such as bonds, stocks, mortgages and other choses in action, was actually within the taxing State at the time of death, in the hands of an administrator or executor with ancillary letters, or where such property was in the hands of a mere agent for collection.<sup>1</sup>

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<sup>1</sup> *St. v. County of St. Louis*, 47 Mo. 594; *Catlin v. Hull*, 21 Vt. 152; cited and approved in *Hoyt v. Comm's*, 23 N. Y. 224; *People v. Gardner*, 51 Barb. 352; *Osgood v. Maguire*, 61 N. Y. 529; *St. Louis v. Wiggins*, 40 Mo. 580; *St. v. Dalrymple*, 70 Md. 249; s. c. 17 Atl. Rep. 82; *Estate of Lawrence G. Clark*, 9 N. Y. Supp. 444; *Matter of Romaine*, N. Y. Law Jour. Mch. 19, 1890; *Matter of Vinot*, 7 N. Y. Supp. 517; *In re Cigala*, L. R. 7 Chanc. Div. 451. But see *Matter of Enston*, 113 N. Y. 181; *San Francisco v. Mackey*, 22 Fed. Rep. 602; *Foreign Bond Tax Cases*, 15 Wall. 300; *Kintzing v. Hutchinson*, 34 Leg. Int. 365; *Orcutt's Appeal*, 97 Pa. St. 179; *Del Busto's Est.* 23 W. N. C. 111. In the *Foreign Bond Tax Cases*, 1872, 15 Wall. 300, it was held by a bare majority of the Supreme Court (Clifford, Miller, Davis and Hunt, JJ., dissenting) that the State of Pennsylvania had no power to enforce a property tax upon mere interest—a debt—due from a railroad company to bondholders residing abroad, where the bonds were, notwithstanding the bonds were secured by mortgage upon property within the State, upon the ground that the interest was a mere debt and intangible, but it is clear from the prevailing opinion that had the bonds been within the State “separated from the possession of the owners” (p. 324) the tax would have been upheld. In *People v. Coleman*, 119 N. Y. 137, it was held that personal property belonging to a non-resident, in the actual

The contrary view of this subject, which is entitled to much consideration, is taken in Pennsylvania, but even in that State the maxim is apparently restricted to intangible property, and personal property of a tangible nature is subject to taxation under the law. The position seems to be somewhat inconsistent,<sup>1</sup> as by express provision of the statute it is made applicable to transfers of shares of stock within the State by foreign executors.<sup>2</sup> In Orcutt's Appeal, where the decedent—a foreigner—died testate, it was said that the act was intended to embrace only personal property of a tangible nature actually situated or used for business purposes within the commonwealth, and not to mere certificates of indebtedness such as government bonds, whose *situs* necessarily followed the domicile of the owner. "By the very words of the act," said the court, "the tax is not only limited to such estates as have a *situs* within the commonwealth and also pass to collateral heirs or legatees, but it is further restricted in defining the mode in which they shall pass, viz.: Estates being within this commonwealth and passing from any person either by will or under the intestate laws thereof. It is clear, therefore, that estates not passing by a will that is operative within the State or under the intestate laws thereof . . . are not within the purview of the act. Devolution either under the intestate

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possession of a trustee residing in another State, was not liable to property tax in New York, although two trustees resided there. Such property would have been taxable if within the State.

<sup>1</sup> See Orcutt's Appeal, 97 Pa. St. 185, 186.

<sup>2</sup> Scott on Intestate Law Pa. 1871, p. 547; *contra* Kintzing v. Hutchinson, 34 Leg. Int. 365. See Matter of Enston, 113 N. Y. 180.

laws of the commonwealth or under a properly executed will is clearly made a condition of liability to the tax."

The court conceded, however, that the will in that case was "sufficient to pass personal property" in the State. It was further said that it did not appear whether any part of the fund would go to the collaterals until after final administration and distribution of the estate.

This rule has been followed in that State as to bonds and other securities, with the extreme result of exempting not only government bonds but bonds and stocks issued under the laws of the State and actually within the State.<sup>1</sup>

Hence bonds belonging to a non-resident decedent, but within the State in an agent's hands at the time of death, are not liable.<sup>2</sup>

So mortgages upon real estate in the State, held as collateral to bonds owned by a decedent domiciled in another State, are not liable.<sup>3</sup>

In some of the earlier cases in that State, where the doctrine of the domicile does not seem to have been deemed material, such property was held liable

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<sup>1</sup> Del Busto's Estate, 23 W. N. C. 111; Com. App. 11 W. N. C. 494, Supreme Ct. Penna.; Bacon's Est. 3 Del. Co. Rep. 603; Kintzing v. Hutchinson, 34 Leg. Int. 365. See Com. v. Smith, 5 Pa. St. 142; Alexander's Est. 3 P. L. J. 87; Bank v. Sharp, 53 Md. 531; *In re* Short's Est. 16 Pa. St. 63; Hood's Est. 21 Id. 106; Matter of Enston, 113 N. Y. 183; Matter of Tulane, 51 Hun, 213. In Foreign Bond Tax Cases, 15 Wall. 300, the court held that State and municipal bonds were tangible property, and classed railway and other securities as intangible.

<sup>2</sup> Com. App. 11 W. N. C. 494.

<sup>3</sup> Bacon's Est. *supra*.

though the decedent, who at the time of his death was domiciled abroad, but previous to that time had been domiciled in Pennsylvania, left a will describing himself of Philadelphia, and his will was probated there.<sup>1</sup>

So in another case<sup>2</sup> it was held that county and State stock belonging to a decedent domiciled abroad at the time of his death were taxable upon the ground that there was a new administration in the State and the funds were there. This was the early doctrine of the English courts.<sup>3</sup>

In New York estates of non-resident decedents within the State were originally held not liable upon a construction placed upon the statute, it being held that there was no intention on the part of the legislature to tax such estates.<sup>4</sup>

The principles adopted by the Pennsylvania courts were substantially applied, and it was held that stocks and bonds in the State in the hands of an agent were in no general sense property and had no *situs* in the

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<sup>1</sup> Com. v. Smith, 5 Pa. St. 142; explained in Kintzing v. Hutchinson, 34 Leg. Int. 365; Short's Est. 16 Pa. St. 66; St. v. Dalrymple, 70 Md. 249.

<sup>2</sup> Alexander's Est. 3 P. L. J. 87; citing *In re Ewing* 1 C. & J. 151.

<sup>3</sup> Atty.-Gen. v. Cockerill, 1 Price, 165; Atty.-Gen. v. Beetsan. 7 Id. 819. See, also, Matter of Romaine, N. Y. Law Jour. Mch. 19. 1890; Alvaney v. Powell, 2 Jones' Eq. 57.

<sup>4</sup> Matter of Enston, 113 N. Y. 179; Matter of Tulane, 51 Hun, 213. The statute (L. 1885, ch. 473, sec. 1) imposed the tax "upon all property which shall pass by will, or by the intestate laws of the State from any person who may die seized or possessed of the same while being a resident of the State, or which property shall be within the State."

State, and that the policy of the State exempted them from general taxation.<sup>1</sup>

All the judges, however, did not concur in this result which was reached by a bare majority,<sup>2</sup> and the dissenting opinion of Danforth, J., ably presents the contrary view of the question. The amended statute in that State<sup>3</sup> now taxing the property of all non-resident decedents shows the true policy of the State. Under this statute it has been held that intangible personal property of a non-resident within the State, is liable to the tax. The question, however, under the amendatory act, has never received any consideration by the Court of Appeals, although incidentally in considering the law of 1887 all the Judges agreed in the Enston case<sup>4</sup> that it was meant to cover the estates of non-resident decedents.<sup>5</sup>

Real estate, however, belonging to a foreign decedent is within these statutes, because it has a *situs* within the State and the title must be transmitted according to the laws of the State governing its descent and conveyance.<sup>6</sup>

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<sup>1</sup> Id.; citing *Williams v. Board of Supervisors*, 78 N. Y. 561. But see *Hoyt v. Comm.* 23 N. Y. 224; citing *Catlin v. Hull*, 21 Vt. 152, and cases *supra*, p. 94.

<sup>2</sup> Danforth, J., wrote a dissenting opinion; Finch, J., concurred therein, and Ruger, C. J., did not vote.

<sup>3</sup> L. 1887, Appendix.

<sup>4</sup> *Supra*.

<sup>5</sup> Appendix, Law of 1887, sec. 1; amending Law 1885, ch. 483, and see, also, *Estate of Lawrence G. Clark*, 9 N. Y. Supp. 444; *Matter of Vinot*, 7 N. Y. Supp. 517; *Matter of Romaine*, N. Y. Law Jour. Mch. 19, 1890.

<sup>6</sup> *Orcutt's App.* 97 Pa. St. 184; *Del Busto's Estate*, 23 W. N. C. 111; *contra*, on question of construction, *Matter of Enston*,



The word "estate" in these acts refers not to the person of the decedent but to the taxable property.<sup>1</sup>

(*d*). *Where succession takes place for purposes of taxation.*—The result of the authorities as to the liability of the personal estates of non-resident decedents in a foreign State, is far from being satisfactory, especially under statutes like those of New York, Pennsylvania and Maryland. In the two latter States the cases of *Orcutt's Appeal*,<sup>2</sup> and *State v. Dalrymple*,<sup>3</sup> where the facts would seem to be much alike, although the language of the statutes is somewhat different, are diametrically opposed, the former following the fiction of law as to intangible property only and claiming to tax tangible property, and the latter a declared public policy to prevent discrimination against resident decedents. But the question, which would seem to be one purely of construction, is of extreme importance, and remains unsettled in many States where succession and legacy tax laws exist. As in principle,

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113 N. Y. 181; *Matter of Tulane*, 51 Hun, 213; see, also, *Chatfield v. Berchtoldt*, L. R. 7 Ch. App. 192.

<sup>1</sup> *Com. v. Smith*, 5 Pa. St. 142; *Orcutt's App.* 97 Id. 179; *St. v. Dalrymple*, 17 Atl. Rep. 82; s. c. 70 Md. 294; *Matter of Howe*, 112 N. Y. 100; but see *Matter of Cager*, 111 N. Y. 343, and Chapter III, sec. 10.

<sup>2</sup> 97 Pa. St. 185, substantially followed in *Matter of Enston*, 113 N. Y. 181, by a divided court; see, also, *Matter of Tulane*, 51 Hun, 213; *Wallace v. Atty.-Gen.* L. R. 1 Ch. App. 1, per Lord Chanc. Cranworth. But such estates are now taxable in New York under Law of 1887; see *Matter of Vinot*, 7 N. Y. Supp 517; *Estate of Clark*, 9 Id. 444; *Matter of Romaine*, N. Y. Law Jour. Mch. 19, 1890; *Matter of Enston*, *supra*.

<sup>3</sup> 70 Md. 294; s. c. 17 Atl. Rep. 82; *Alvaney v. Powell*, 2 Jones' Eq. 51, and see cases, *supra*.

these taxes are primarily imposed not upon property, but upon the succession or devolution of property by will or intestate law, this would seem to be the only theory upon which such a tax can properly be maintained.<sup>1</sup>

Hence, in cases of this character and especially where there is intestacy the pivotal question would often seem to be, under what law is the succession had? That of the domicile, as claimed in England under the legacy act, or that of the actual *situs* of the property? And if under the former, can there be a tax imposed at the real *situs* upon the theory that there is a succession or an administration there for the purpose of taxation? A clear solution of these questions, so far as intestates is concerned, is difficult where, as in New York and Pennsylvania, the statutes speak of property "passing under the intestate laws of this State." Such intestate estates have been held liable in the former State under the amendatory act of 1887,<sup>2</sup> though not liable under the prior law,<sup>3</sup> the present statute providing that "*if such decedent was not a resident of this State at the time of death, which property or any part thereof, shall be within this State or any interest therein.*" The amendment is included in the italics, and the language would seem to be broad enough to cover both testates and in-

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<sup>1</sup> In *Matter of McPherson*, 104 N. Y. 306, the court held the tax could be constitutionally imposed whether it was considered a property or succession tax; *contra*, it seems, Com's. App. (*Bittinger's Est.*), 129 Pa. St. 338.

<sup>2</sup> *Matter of Romaine*, N. Y. Law J. March 19, 1890; see U. S. v. Rankin, 8 Fed. Rep. 874.

<sup>3</sup> *Matter of Tulane*, 51 Hun, 213; *Matter of Enston*, 113 N. Y. 181.

testates as held in the Romaine case,<sup>1</sup> otherwise we have the strange result of a State taxing one class of foreign estates, those belonging to testates, and exempting the estates of those who die intestate. It is hardly credible that such an unjust discrimination can fairly be reached by the courts under this statute, and, as we have seen, it has thus far been repudiated.

Ordinarily, neither personal nor real property can have a *situs* in two States for the purpose of succession;<sup>2</sup> but there is no constitutional objection to a tax upon the succession in two States,<sup>3</sup> but as the *situs* at the domicile, where the property is in fact in a foreign State, is the result of a mere fiction of law, and as the property of residents and non-residents receives alike the equal care and protection of such foreign State, it would seem that the legislature would have undoubted power, as had been done in Connecticut, to make a special or particular succession by statute as to personal property of non-resident decedents actually within its jurisdiction, whether tangible or intangible, for the purpose of taxation,<sup>4</sup> otherwise the fiction would be paramount to a positive statute.<sup>5</sup>

At least no constitutional ground would seem to be invaded where either the person owning the property or the property itself is actually within the jurisdiction of the taxing State.

The State may give shares of stock held by indi-

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<sup>1</sup> *Supra*.

<sup>2</sup> Kintzing v. Hutchinson, 34 Leg. Int. 365.

<sup>3</sup> Chapter II, sec. 9.

<sup>4</sup> See Com's. App. (Bittinger's Est.), 129 Pa. St. 338.

<sup>5</sup> See L. Conn. 1889, Appendix. Chapter II, sec. 16.

viduals a special or particular *situs* for the purpose of taxation, and may provide special modes for the collection of taxes levied thereon, and it is often convenient as well as perfectly just to adopt this course.<sup>1</sup>

Upon principle, if the tax can be imposed upon the tangible personal property of a non-resident decedent within the State, as held in *Orcutt's Appeal*,<sup>2</sup> there would seem to be no just reason why it should not equally be imposed upon the intangible property actually within the taxing State.<sup>3</sup>

In conclusion, it may be said that the cases which exempt tangible or intangible property of non-resident decedents actually within the taxing State would seem to be objectionable upon several grounds:

*First.* The fiction upon which the rule is based exempting such property, did not originally relate to questions of taxation, but, as we have seen,<sup>4</sup> was based merely upon questions of comity between States or nations. It never had any application to creditors of the deceased in the State where the property actually was situated, and should not exist against a State tax, which the citizen is compelled to pay.<sup>5</sup>

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<sup>1</sup> *Cooley on Taxation*, 2d ed. 23; citing *Am. Coal Co. v. Comm.* 59 Md. 185; *Baltimore v. R. R. Co.* 57 Id. 31.

<sup>2</sup> *Supra.*

<sup>3</sup> *Matter of Romaine*, N. Y. Law Jour. Mch. 19, 1890; *Matter of Vinot*, 7 N. Y. Supp. 517; *U. S. v. Rankin*, 8 Fed. Rep. 874; see *Matter of Tulane*, 51 Hun, 213.

<sup>4</sup> *Supra*, p. 94.

<sup>5</sup> See remarks of Lord Brougham in *Thompson v. Advocate-Gen.* 12 C. & F. 28; *Bruce v. Bruce*, 2 Bos. & P. 229; *Catlin v. Hull*, 21 Vt. 158; cited and approved in *Hoyt v. Comm.* 23 N. Y.

"The fiction or maxim *mobilia personam sequuntur*," says Comstock, C. J., in *Hoyt v. Comm.*<sup>1</sup> "is by no means of universal application. Like other fictions, it has its special uses. It may be resorted to when convenience and justice so require. In other circumstances the truth and not the fiction affords, as it plainly ought to afford, the rule of action. The proper use of legal fictions is to prevent injustice, according to the maxim *in fictione juris semper aequitas existat*. . . . Accordingly, there seems to be no place for the fiction of which we are speaking, in a well adjusted system of taxation."

*Second.* It unjustly discriminates against the estates of resident decedents, and thus allows non-residents greater privileges than those conferred upon the former.<sup>2</sup>

*Third.* It permits a vast amount of personal property, under a mere fiction of law, such property being protected at all times by the State, to escape the common burden imposed upon like property belonging to citizens.

§ 5. *Foreign legacies.*—The rule would appear to be equally well established under these statutes that as to the property of a non-resident decedent in the

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232; Whart. Private International Law, secs. 11-13, 297; Green v. Van Buskirk, 7 Wall. 150; Hervey v. Locomotive Works, 93 U. S. 664; Lewis v. Woodford, 58 Tenn. 25; Burtwhistle v. Vardill, 3 B. & C. 438, 451; Alvanev v. Powell, 2 Jones' Eq. 51; St. v. Dalrymple, 70 Md. 249.

<sup>1</sup> 23 N. Y. 228, followed in *Graham v. Bank*, 84 N. Y. 400, 401; *Matter of Romaine*, N. Y. Law Jour. Mch. 19, 1890; see *People ex rel. Darrow v. Coleman*, 119 N. Y. 137.

<sup>2</sup> *Id.*

nature of legacies or shares, and termed "foreign legacies," brought or sent within the taxing State from abroad, after the death of the decedent, there is no liability for the tax.

Generally the duty is only imposed upon property of non-resident decedents within the taxing State at the time of death. In cases of this character it is manifest that the actual as well as a domiciliary *situs* is in such foreign State when the ownership in the legacy accrues. Again it may well be said as to such property, there is no succession to it under or by virtue of the laws of the taxing State, hence there would seem to be no reason whatever for imposing a tax upon a succession to such property.<sup>1</sup>

While for the purpose of raising revenue under these laws it is declared to be a mere matter of expediency whether the domicile of the decedent or the *situs* of the property be adopted as the rule, if there be neither of these within the taxing State, no government would impose a tax upon legatees or next of kin merely because of their residence within its jurisdiction.<sup>2</sup>

So where, under a general tax law, personal property sought to be taxed belonged to a non-resident, and was in the possession of one of several trustees residing outside the taxing State, it has recently been held that the mere fact that two of the

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<sup>1</sup> State v. Brevard, Phil. Eq. R. 141; Alvaney v. Powell, 2 Jones' Eq. 51; St. v. Brim, 4 Id. 301; Com. v. Duffield, 12 Pa. St. 277; Hood's Est. 21 Id. 106; Orcutt's App. 97 Id. 184; Drayton's App. 61 Id. 172; *In re* Tootall's Trusts, L. R. 23 Ch. Div. 532.

<sup>2</sup> St. v. Brim, *supra*; Hood's Est. *supra*.

trustees resided in the latter State did not warrant the imposition of a tax upon such property.<sup>1</sup>

§ 6. *Rules where non-resident decedent's debts exceed value of estate.*<sup>2</sup>—At law the settlement of the estate of a non-resident decedent, together with the title to his property in a foreign State, generally devolves upon a local administrator in such foreign State, whose business is to collect the assets, and, having satisfied the demands of creditors in such State, to remit the surplus of the proceeds to the executor or administrator at the place of domicile for distribution among the unpaid creditors and next of kin.<sup>3</sup>

But, as debts or other lawful obligations exceeding the supposed value of the estate may often exist at the domicile unknown to local representatives and tribunals, the difficulty early suggested itself in such cases of ascertaining the exact amount passing to the legatee or devisee whose interest it was sought to tax, and thus making it uncertain to some extent whether, should there be debts, any surplus would exist, and if so, the exact amount which would be subject to taxation.

Upon these grounds it was held in Pennsylvania that such a tax could not practically be imposed upon intangible personal property except by the State of the domicile where the final administration of the estate was made.<sup>4</sup>

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<sup>1</sup> *Peo. ex rel. Darrow v. Coleman*, 119 N. Y. 137.

<sup>2</sup> See, also, Chapter V, as to deduction of debts upon the appraisalment.

<sup>3</sup> *In re Short's Est.* 16 Pa. St. 66; *Del Busto's Est.* 23 W. N. C. 111; *Matter of Enston*, 113 N. Y. 181.

<sup>4</sup> *Orcutt's App.* 97 Pa. St. 185, 186; *In re Short's Est.* 16 Id.

The same ground of objection was raised in England under the legacy and succession laws as to all personal property of non-residents,<sup>1</sup> although as we have seen the authorities in that country are not harmonious upon the subject, and the succession tax is in many instances imposed upon estates of non-resident decedents.<sup>2</sup>

In New York, in speaking of this subject<sup>3</sup> under the law of 1885, which was held not to apply to non-resident estates, Andrews, J., said: "That" (how much will pass to collaterals) "can only be known after the entire expenses of administration and the debts and liabilities of the deceased have been ascertained and deducted at the place of his domicile. Suppose a non-resident dies leaving \$1,000,000 in this State, and is largely indebted at the place of his domicile, what his net estate will be after deducting debts and expenses of administration can only be ascertained at his domicile, where his estate must be finally administered and adjusted, and there can be no way of adjusting the estate here, as there is no machinery in the law here appropriate to such a pur-

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66; Com's. App. 34 Id. 204; Strode v. Com. 52 Id. 181; Com. v. Coleman, 52 Pa. St. 470, 472; Hood's Est. 21 Id. 106; Matter of Enston, 113 N. Y. 181; Matter of Tulane, 51 Hun, 213; Del Busto's Est. 23 W. N. C. 111; Bacon's Est. 3 Del. Co. Rep. 603.

<sup>1</sup> Wallace v. Atty.-Gen. L. R. 1 Chanc. App. 1.

<sup>2</sup> *Supra*, p. 88; *In re Lovelace*, 4 DeG. & J. 340; *In re Wallop's Trust*, 1 D. J. & S. 356; *In re Tootall's Trust*, L. R. 23 Ch. Div. 532.

<sup>3</sup> Matter of Enston, 113 N. Y. 182; Danforth and Finch, JJ., dissented, and Ruger, C. J., not voting. And see opinion Danforth, J., p. 185.



pose, and thus it would be impractical to administer this statute."

"The tax," said the court in Orcutt's Appeal,<sup>1</sup> "does not attach to the very article of property of which the deceased died possessed.<sup>2</sup> It is imposed only on what remains for distribution after expenses of administration, debts and rightful claims of third parties are paid or provided for. It is on the net succession to the beneficiaries, and not on the securities in which the estate of the decedent was invested.<sup>3</sup> How, then, is it possible to impose a tax on this fund when it has never been judicially ascertained how much or whether any of it will go to the collateral legatees? When the executrix charges herself with the fund received from the ancillary administrator, and settles her account in New Jersey, who can tell how much of it may be successfully claimed by creditors and others as against legatees? The court of the testator's domicile is the only one that can properly determine how much of it will actually go to the collateral legatees."

But it would seem that in many instances these objections are liable to be more theoretical than real.<sup>4</sup> Assuming that there is an intention to tax non-resident decedents' estates, whether the tax shall be payable out of the specific taxable interest or only upon the net surplus of the whole estate remaining after deducting just debts and liabilities owing either at

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<sup>1</sup> *Supra*.

<sup>2</sup> But see per Danforth, J., Matter of Enston, 113 N. Y. 185.

<sup>3</sup> Citing Com's. App. *supra*; Strode v. Com. *supra*.

<sup>4</sup> Wallace v. Atty.-Gen. L. R. 1 Chanc. App. 1. And see Alvaney v. Powell, 2 Jones' Eq. 51; Matter of Enston, 113 N. Y. 185.

the domicile or *situs* must often depend upon the language of the statute, and its practical enforcement must, like that of every statute, depend upon the circumstances of each case. From the authorities, and on principle, it would appear that the tax can only fairly be imposed upon the net surplus passing to collaterals after all just debts and liabilities are deducted or paid.<sup>1</sup> Hence, where decedent's debts in another State exceed the value of the personalty there, it is not liable to taxation.<sup>2</sup>

A fair and reasonable opportunity should therefore be afforded the estate or its representatives to show, as the fact may be, either that the estate is insolvent and thus wholly unable to pay any tax, as no interest will pass to the heir, legatee or devisee, or that by reason of the existence of just and lawful demands at the domicile or *situs* the tax should be proportionately reduced.

In some States the tax is upon the "clear value," or "clear market value," or "fair and clear market value" of the estate at decedent's death,<sup>3</sup> thus implying that outstanding debts and liabilities that are just and legal must be taken into consideration by the court or appraiser in estimating the value of the taxable interest.

And in New York the statute<sup>4</sup> provides that whenever any debts shall be proven against the estate of a decedent after the payment of legacies or distribu-

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<sup>1</sup> *Strode v. Com.* 52 Pa. St. 189, and cases *supra*.

<sup>2</sup> *Com. v. Coleman*, 52 Pa. St. 473.

<sup>3</sup> See Appendix, Law Penn. 1887, p. 79, sec. 1; Law New York, 1887, ch. 713, secs. 1 and 2; L. Conn. 1889, ch. clxxx, p. 106; see *Matter of Astor*, 6 Dem. 411.

<sup>4</sup> Appendix, sec. 10. See, also, Law Penn. Appendix, sec. 11.

tion of property from which the said tax has been deducted, or upon which it has been paid, and a refund is made by the legatee, or devisee, a proportion of the tax so paid shall be repaid to him by the executor, if the said tax has not been paid to the county treasurer, or by them if it has been so paid.<sup>1</sup>

Where the testator dies possessed of personal property in England as well as abroad, the application for a return of the duty on the ground of debts must, under the English law, be made without taking into consideration the foreign assets; and should he have incurred foreign debts, these must be paid out of the foreign assets as far as they will be sufficient to satisfy them. But should the testator die out of England, leaving assets in the latter country, for which it is necessary to take out a grant, no application for the return of any portion of the probate duty in respect of debts incurred abroad will be entertained, for the executor who has taken out the grant there, after paying any debts incurred in England, in respect of which any application for a return of duty may be made, will transmit the remainder of the assets to the representative of the deceased in the country where he died, to be dealt with according to the law of that country.<sup>2</sup>

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<sup>1</sup> See *Matter of Enston*, 113 N. Y. 186. See, under this section, *Matter of Howard*, 27 N. Y. St. Rep. 8; 54 Hun. 305; citing *Dewey v. Supervisors*, 62 N. Y. 294; *Matter of Hall*, 27 N. Y. St. Rep. 133. Also, *Matter of McMahon*, 1 How. Pr. (U. S.) 270. *Red. Surr. Pr.* 4th ed. p. 586, considers this section (12) open to constitutional objection.

<sup>2</sup> *Layton on Succession and Legacy Duties*, p. 250; citing *Reg. v. Comm. Ostell's Case*, 18 L. J. N. S. Q. B. 201.

## CHAPTER V.

### APPRAISER AND APPRAISEMENT.

- § 1. Appointment and duties of appraiser.
- 2. Land and personal estate, and where appraised.
- 3. Life estates, annuities, legacies and terms of years.
- 4. Remainders, or future estates.
  - (a) Under acts of Congress.
  - (b) In Maryland and Connecticut.
  - (c) In Pennsylvania.
  - (d) New York.
- 5. Effect of appraisement and appeals therefrom.

§ 1. *Appointment and duties of appraiser.*<sup>1</sup>—The proceeding for the appointment of an appraiser, the duties of such appraiser, and the method by which property subject to succession or legacy taxation is to be valued or appraised, are matters regulated by statute.<sup>2</sup>

An appraiser should be appointed only where specific legacies subject to the tax are given, or where taxable inheritances exist, or estates in fee are devised, or remainders, annuities, life estates or terms of years are created.<sup>3</sup>

Under the statute of Pennsylvania he is required

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<sup>1</sup> See, also, Chapter VII, sec. 1.

<sup>2</sup> See Appendix, L. N. Y. 1887, ch. 713, secs. 2, 13, 14; L. Pa. 1887, ch. 79, secs. 12, 13; L. Conn. 1889, ch. clxxx, p. 106, secs. 2, 12; Code of Md. 1888, vol. ii, 1442, secs. 104, 106 *et seq.* For forms relating to appraisements, etc., in N. Y., see Appendix. Matter of Astor, 6 Dem. 402; 14 N. Y. St. Rep. 478.

<sup>3</sup> Matter of Jones, 5 Dem. 30; 19 Abb. N. C. 221.

to fix the value of estates subject to the tax, and to make a "fair and conscionable" appraisal of such estates, and to assess and fix the cash value of all annuities and life estates.<sup>1</sup>

As it is primarily the duty of the executor to apply for the appraisal, under the New York statute the power given to the surrogate to appoint an appraiser of his own motion is not intended to relieve the representative of the estate from their duty in this respect,<sup>2</sup> and where the legacies are in cash the court or surrogate fixes and assesses the tax upon the face value thereof, and no appraiser is necessary.<sup>3</sup>

The object of the appraisal, as well as the duty of the appraiser, is not to determine whether the estate is subject to the tax, but simply to ascertain the value of the estate, and where it is not subject to be assessed with the tax the entire proceeding is a nullity, for it is only as to estates that are or

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<sup>1</sup> See Stat. Appendix, sec. 12. Goldstein's Est. 16 Phila. 319; Kaas's Est. 45 Leg. Int. 217; Com's. App. (Cooper's Est.), 127 Pa. St. 435, and cases *supra*. As to appraisal of partnership interests and assets, see Com. App. (Fagely's Est.), 128 Pa. St. 604. For mode of ascertaining duty under English legacy and succession acts, see 36 Geo. III, ch. 52, sec. 22; 16 and 17 Vict. ch. 51, secs. 10, 21, 22 *et seq.*; Atty.-Gen. v. Sefton, 11 H. L. Cases, 257, 269; 2 H. & C. 362; Atty.-Gen. v. Dardier, L. R. 11 Q. B. D. 16.

<sup>2</sup> Matter of Frowe, 20 N. Y. St. Rep. 305; s. c. as Fraser v. Peo. 6 Dem. 174. But see Matter of Farley, 15 N. Y. St. Rep. 727.

<sup>3</sup> Matter of Astor, 6 Dem. 402, 413; Matter of Jones, 5 Id. 30; Est. of Bird, N. Y. Law Jour. July 28, 1890; Est. of McGowan, Id. July 30, 1890; Matter of Pond, N. Y. Daily Reg. May 25, 1889; *contra* Matter of Peck, 30 N. Y. St. Rep. 209; as to \$500 legacies see Chapter III, sec. 10.

shall be subject to the payment of the tax that the register has any power for the purpose of appraisement and assessment, and the owner of the estate is not bound to submit the question of his liability to pay the tax, either to the register or to the appraiser.<sup>1</sup> The appraisement, as a general rule, should be restricted to the taxable estate or interest—that only being liable to the tax—and should not include the general property of the decedent,<sup>2</sup> unless it is all liable to taxation.

The duties of the appraiser, under the New York statute, were defined by Surrogate Ransom, in the *Matter of Astor*:<sup>3</sup>—He should report any property estate or interest therein subject to the tax.<sup>4</sup> It is not his duty to report exemptions,<sup>5</sup> or to fix the value of property not subject to the tax; and where he has not reported all property that is subject thereto, exception may be raised upon the hearing on his report, and where the exception is sustained the report will be sent back for further appraisement;<sup>6</sup> and where the appraiser is in doubt regarding the liability of any property, he should report it as subject to

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<sup>1</sup> *Stinger v. Com.* 26 Pa. St. 424, 429; *Kaas's Est.* 45 Leg. Int. 217. But see *Matter of Astor*, 6 Dem. 410.

<sup>2</sup> *Matter of Jones*, 5 Dem. 30; *Matter of Robertson*, 5 Id. 92. But see *Com. v. Kerchner*, 24 W. N. C. 200; *Com. v. Boyle*, 2 Del. Co. Rep. 335; Chapter III, sec. 10.

<sup>3</sup> *Supra*, 415.

<sup>4</sup> L. 1885, ch. 483, sec. 13; L. 1887, sec. 13, Appendix; *Matter of Wallace*, 18 N. Y. St. Rep. 387; 4 N. Y. Supp. 465.

<sup>5</sup> *Matter of Vanderbilt*, 10 N. Y. Supp. 239; *Est. of McGowan*, N. Y. Law Jour. July 30, 1890.

<sup>6</sup> *Est. of Matthews*, N. Y. Law Jour. July 27, 1889; *Est. of Jones*, Id. July 31, 1890; *Est. of Benet*, N. Y. Daily Reg. Mch. 4, 1889.

the tax.<sup>1</sup> He has no power to take testimony under oath,<sup>2</sup> although in Pennsylvania it would seem that such power is conferred.<sup>3</sup> All papers relating to matters before the appraiser should be submitted to him before he makes his report to the surrogate, otherwise the matter will be referred to him to proceed *de novo*.<sup>4</sup> The names of all persons entitled to notice should be given in the order appointing the appraiser. To these he must give notice of the proceeding, and he should also state in his report whether any other persons claim any interest in the property appraised,<sup>5</sup> and all parties notified have the right to attend before him, and to be heard on the question of the value of the property and its or their liability to the tax.<sup>6</sup>

Upon a subsequent occasion, in defining the duties of the appraiser, Surrogate Ransom said,<sup>7</sup> in a case where it was objected that the appraiser had no power to construe clauses of the will for the purpose of reporting legacies liable to the tax: "It is certainly the appraiser's duty to examine the will to see what its provisions are, and as certainly his duty to call the attention of the surrogate to any facts that appear to him as constituting sufficient reasons for

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<sup>1</sup> Matter of Hendricks, 1 Con. Surr. Rep. 301; 18 N. Y. St. Rep. 989; Est. of McGowan, *supra*.

<sup>2</sup> Matter of Astor, *supra*, 410.

<sup>3</sup> Kaas's Est. 45 Leg. Int. 217.

<sup>4</sup> Est. of Jones, N. Y. Law Jour. July 31, 1890.

<sup>5</sup> Matter of Astor, *supra*, 410; Matter of Vanderbilt, 10 N. Y. Supp. 239; Matter of McPherson, 104 N. Y. 306; Cox's App. 1 Purd. Dig. 10th ed. 218, note.

<sup>6</sup> Matter of Astor, *supra*, 410. But see Stinger v. Com. 26 Pa. St. 424.

<sup>7</sup> Est. of McGowan, N. Y. Law Jour. July 30, 1890.

reporting such legacies as subject to the tax. His duty is to place all the facts before the surrogate. The report is not final. It is to aid the surrogate to decide what property is liable to the tax, and it is subject to the confirmation, revision or rejection by the surrogate. The facts in this case ascertained by the appraiser, and undisputed, show that the legacies in question passed to a person not exempted. On those facts the surrogate construes the will."

By express provision of the statute of New York<sup>1</sup> and by that of Pennsylvania,<sup>2</sup> an appraiser may be appointed as often as and whenever occasion may require, but it seems that where an appraiser is appointed, and other interests accrue after his appointment but before his report is filed, he has power to appraise such interests and to report them for taxation.<sup>3</sup> And when property has been omitted, by mistake, fraud or concealment, from the first appraisal, another will be allowed.<sup>4</sup>

§ 2. *Land and personal estate, and where appraised.*—The fact that these statutes require the property to be appraised in order to fix the amount of the tax does not make the tax imposed upon the appraised value unconstitutional as a property tax, because it is the privilege of taking by will or descent which is taxed, and the appraisal is merely a means of ascertaining the value of such privilege.<sup>5</sup>

<sup>1</sup> Appendix, sec. 13.

<sup>2</sup> Appendix, sec. 12.

<sup>3</sup> Matter of Stewart, 30 N. Y. St. Rep. 738.

<sup>4</sup> See *post*, sec. 5, and Com. v. Freedley, 21 Pa. St. 36; Matter of Astor, *supra*, 416.

<sup>5</sup> Wallace v. Myers, 38 Fed. Rep. 184; Matter of McPherson, 104 N. Y. 306. See Chapter II, sec. 3.



Under the Pennsylvania statute the appraisement and proceedings thereunder must be had in the county where the letters testamentary and of administration have been issued, but the appraiser may legally appraise land situate in other counties.<sup>1</sup> But where there are several tracts of land to be valued they should be valued separately, as occupied by the tenants,<sup>2</sup> and the appraisement is made, as we have seen, in the same manner as land is assessed for general taxation purposes.<sup>3</sup>

In New York<sup>4</sup> the appraiser appointed by the surrogate first acquiring jurisdiction may appraise real estate in bulk though it be situate in different counties.<sup>5</sup>

But it seems that if the property has no salable value nor any actual or potential annual value at the time when the succession accrues, it is not capable of being assessed,<sup>6</sup> and neither possible increase or diminution in the value of the property after the succession accrues is dealt with.<sup>7</sup>

In New York the statute requires the appraiser to appraise the property, both real and personal, at

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<sup>1</sup> *Stinger v. Com.* 26 Pa. St. 429, 431. In Maryland the statute (Appendix. sec. 108) provides for the appointment of two appraisers where there is land in different counties.

<sup>2</sup> *McKean's Est.* 29 P. L. J. N. S. 299.

<sup>3</sup> *McKean's Est. supra*; *Com. v. Freedley*, 21 Pa. St. 36.

<sup>4</sup> Appendix, secs. 15, 17.

<sup>5</sup> *Matter of Keenan*, 1 Con. Surr. 226.

<sup>6</sup> *Atty.-Gen. v. Sefton*, 11 H. L. Cases, 257, 269.

<sup>7</sup> See *post*, sec. 5, and *Com. v. Freedley*, 21 Pa. St. 36; *Stinger v. Com.* 26 Id. 425; *Est. of Miller*, 45 Leg. Int. 175; *Est. of Bird*, N. Y. Law Jour. July 28, 1890; but see *Atty.-Gen. v. Dardier*, L. R. 11 Q. B. D. 16; *Matter of Stewart*, 30 N. Y. St. Rep. 738.

its "fair market value."<sup>1</sup>—"fair and clear market value."<sup>2</sup> These phrases would seem to be synonymous,<sup>3</sup> and to require all just debts and liabilities due and owing by decedent at the time of his death to be deducted from the market value of the estate.<sup>4</sup>

In Commonwealth's Appeal<sup>5</sup> the question arose as to the meaning of words requiring the tax to be imposed "on the clear value of such estates." The court said: "The appraiser was of the opinion that because the real estate descended intact to the collateral heirs the tax must be assessed upon the valuation of the real estate without abatement of the debts owing by the decedent at the time of his death. This, however, would exclude any room for the application of 'clear value,' and is inconsistent with the legislative intent in imposing the tax. This tax at first became a lien due upon the death of the decedent. His debts were then a lien against his real estate, and the law authorized the land to be sold, if

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<sup>1</sup> Appendix, sec. 13.

<sup>2</sup> Ibid, sec. 2.

<sup>3</sup> Matter of Astor, 6 Dem. 411; Matter of Leavitt, 4 N. Y. Supp. 179; Est. of Bird, N. Y. Law Jour. July 31, 1890. See Com's. App. (Cooper's Est.), 127 Pa. St. 440; Com. v. Freedley, 21 Id. 33. In Connecticut it is "the actual value" or "actual market value." L. Conn. Appendix, secs. 2, 12. In Maryland it is the "clear value," "appraised value," "true value;" L. Md. Appendix, secs. 102, 104, 112.

<sup>4</sup> Orcutt's App. 97 Pa. St. 175; Com's. App. (Avery's Est.), 34 Id. 204; Strode v. Com. 52 Id. 181; Rubincam's Est. 38 Leg. Int. 261; Kaas's Est. 45 Leg. Int. 217; Cullen's Est. 26 W. N. C. 216; Com. v. Coleman, 52 Pa. St. 473; Com's. App. (Cooper's Est.), 127 Id. 435; 17 Atl. 1096; Matter of Enston, 113 N. Y. 181. See Mellon's App. 114 Pa. St. 569.

<sup>5</sup> Cooper's Est. *supra*, 440.

necessary, for their payment. The surplus only was liable to the tax. It is to be assessed not upon the pecuniary value of the land coming to the tenant in remainder, but upon the clear value of the estate passing from the person who may die seized thereof, and the probable duration of the preceding life-estate."<sup>1</sup>

§ 3. *Life-estates, annuities, legacies and terms of years.*<sup>2</sup>—Under the New York statute,<sup>3</sup> where the taxable interest shall be a life-estate, or term of years, the entire property or fund by which such estate or interest is supported or of which it is a part, shall be appraised, immediately after the death of the decedent, at what was its fair and clear market value at that time, and the statute further provides that the value of every future or contingent or limited estate, income or interest, shall be determined by the standard of mortality and of value employed by the Superintendent of the Insurance Department in ascertaining the value of policies of life insurance and annuities. Such superintendent shall, on the application of any surrogate, determine the value of such future or contingent or limited estate, income or interest upon the facts contained in the appraiser's report, and certify the same to the surrogate, and his certificate<sup>4</sup> shall be conclusive evidence that the method of

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<sup>1</sup> See, also, Chapter IV, sec. 6.

<sup>2</sup> Constitutional rules considered with reference to the valuation of life-estates, &c. See *Williams' Case*, 3 Bland's Ch. 186-227.

<sup>3</sup> Appendix, secs. 2, 13; and see *Matter of Robertson*, 5 Dem. 92.

<sup>4</sup> See Appendix, Forms.

computation adopted therein is correct. The State is thus afforded a standard and uniform method under this statute in appraising estates liable to taxation.

In Connecticut<sup>1</sup> the value of annuities and life-estates is to be determined by the actuaries' combined experience tables, and five per centum compound interest.

In Maryland,<sup>2</sup> where there are annuities, life-estates, or remainders liable to the tax, the orphan's court is given power to determine, in its discretion, at such time as it thinks proper, the proportion of the tax a party shall pay, and its judgment is final and conclusive, but it would seem that this means only as to the valuation and not as to any question of liability to the tax.<sup>3</sup>

In Pennsylvania<sup>4</sup> the appraisement of life-estates, annuities and terms of years is made by the official appraiser appointed by the register of wills, and he is required to make a fair and conscionable appraisement of such estates.<sup>5</sup>

But no system or rule for the purpose of ascertaining the value of such estates exists in that State, and the question seems to be left entirely to the discretion of the register of wills. Generally, however,

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<sup>1</sup> Appendix, sec. 12.

<sup>2</sup> Appendix, sec. 115.

<sup>3</sup> *Tyson v. St.* 54 Md. 577.

<sup>4</sup> Statute, Appendix, sec. 12. Appraiser's duties defined with reference to life estates and annuities, *Kaas's Est.* 45 Leg. Int. 217.

<sup>5</sup> *Wharton's Est.* 10 W. N. C. 106; *Goldstein's Est.* 16 Phila. 317; *Kaas's Est. supra*; *Com's. App. (Cooper's Est.)*, 127 Pa. St. 435.

the Carlisle tables are adopted as the basis of valuation.<sup>1</sup>

Where testatrix bequeathed a specific sum in trust to invest and after deducting all proper costs and charges thereon to pay the interest and income thereof to her niece for life, such a bequest presupposes a deduction of the expenses of the trust, the commissions of the trustees, and other charges which may lawfully be incurred, thus diminishing the amount to be paid the *cestui quē trust* annually. These expenses are to be considered upon testimony to be submitted to the appraiser by the executor or life-tenant in arriving at a fair and conscionable appraisal of the cash value of the annuity, and it is then for the appraiser to determine the probable net income of the bequest that the tax may be imposed thereon;<sup>2</sup> and though by the terms of the will it may become necessary to deplete the principal of the fund, to pay life-annuities, making it impossible to determine the present cash value of the annuities, that fact is immaterial as regards the question of appraisal as the property is to be taken at its "clear market value" at the testator's death.<sup>3</sup>

Where an estate for life is left to husband and wife as tenants by the entirety and the wife is not exempt by statute, her interest being certain and definite and made assignable by law and subject to

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<sup>1</sup> Goldstein's Est. 16 Phila. 319; Kaas's Est. 45 Leg. Int. 217.

<sup>2</sup> Kaas's Est., and cases cited, *supra*.

<sup>3</sup> Matter of Leavitt, 4 N. Y. Supp. 179; 22 N. Y. St. Rep. 81; Matter of Johnson, 6 Dem. 146; Est of Bird, N. Y. Law Jour. July 31, 1890; but see Matter of Clark, 1 Con. Surr. Rep. 431.

partition,<sup>1</sup> is liable to assessment and taxation during the life-time of the husband.<sup>2</sup>

Where there are contingent annuities<sup>3</sup> an appraisal thereof will be allowed upon decedent's death,<sup>4</sup> if the value of such annuities can then be ascertained, otherwise they may be appraised and taxed when the contingency occurs.<sup>5</sup>

By the New York statute it is provided<sup>6</sup> that where the legacy may be valued at less than \$500, it is exempt. Under this clause of the statute it has been held that a cash legacy of \$500, which is not payable at decedent's death, is exempt from the tax<sup>7</sup> upon the ground that as the executor has a year in which to pay such legacy its value at the time it comes to the legatee is less than \$500. If this rule is to be sustained as the correct interpretation of the statute, all legacies of this amount will escape taxation unless made payable by the terms of the will immediately upon decedent's death.

The conclusion seems to be not only against the

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<sup>1</sup> L. N. Y. 1880, ch. 472.

<sup>2</sup> *Est. of Higgins*, N. Y. Law Jour. Dec. 7, 1889, distinguishing *Matter of LeFever*, 6 Dem. 154; *Matter of Hopkins*, 6 Dem. 1; but see *O'Connor v. McMahon*, 54 Hun, 66. See, also, as to tenants by the entirety, *Stetz v. Schreck*, 32 N. Y. St. Rep. 133; *Beach v. Hollister*, 3 Hun, 519.

<sup>3</sup> See sec. 4, *post*.

<sup>4</sup> *Matter of Clark*, 1 Con. Surr. Rep. 431.

<sup>5</sup> See *Matter of Stewart*, 30 N. Y. St. Rep. 938; *Matter of Benjamin*, N. Y. Daily Reg. Dec. 7, 1889; *Matter of LeFever*, 5 Dem. 184; *Matter of Hopkins*, 6 Id. 1; see Chapter VI, sec. 3 (c); *Matter of Cager*, 111 N. Y. 343.

<sup>6</sup> Appendix, sec. 1.

<sup>7</sup> *Matter of Peck*, 30 N. Y. St. Rep. 209; citing *Thorne v. Garner*, 113 N. Y. 198.

general practice of many of the surrogate courts heretofore to tax such legacies at their face value,<sup>1</sup> but also against the provision of the statute requiring property to be appraised at its fair market value, not at the time it is delivered or paid to the legatee but at decedent's death when it passes to and becomes the property of the legatee.

Moreover, unless the legatee make an actual sale of the legacy before it becomes payable, for less than its face value he will receive the full amount without deduction. A result contrary to that announced in the *Matter of Peck*<sup>2</sup> has recently been reached by the Surrogate of New York county.<sup>3</sup>

After considering at length the different provisions of the statute bearing upon the subject, he concludes: "Thus we have seen that the legislature plainly distinguished between a moneyed legacy and one of other property, and find authority for the construction which has been given to this act by me in several cases heretofore—that a moneyed legacy need not be appraised. In fact the meaning of the act itself is an appraisement by the legislature of a moneyed legacy at its face value at the date of decedent's death. Legacies of property not in money are to be appraised at their fair, clear market value as of the date of decedent's death, not as of one year thereafter when the legacy is payable and its delivery may be enforced. It is said that the fair, clear market

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<sup>1</sup> *Matter of Pond*, N. Y. Daily Reg. May 25, 1889; *Est. of Bird*, N. Y. Law Jour. July 28, 1890.

<sup>2</sup> *Supra*.

<sup>3</sup> *Est. of Bird*, N. Y. Law Jour. July 28, 1890; *Est. of McGowan*, Id. July 30, 1890.

value of the property subject to the tax is what it will be worth when the legatee is entitled to receive it and may compel its delivery to him. This construction of the act works its repeal. Moreover, it is contrary to its very letter. The soundness of this proposition is shown by a consideration of the rights of the parties in case of property other than money which had appreciated in value since decedent's death, for instance, stocks."

And in referring to other conflicting decisions upon this point the court continued: "They have appraised the money legacy at what it will be worth to the legatee at the end of the year, and to ascertain that fact they take five per cent. from its face value. I confess I am unable to perceive any authority for that rate of discount. Legal interest is 6 per cent., and if any discount should be allowed, why not at the legal rate of interest? At this point it occurs to me that the rate of interest might be increased or diminished within a year after decedent's death, and of course any change in the rate of interest would, according to the construction of the learned surrogates, affect the market value of the legacy. I am unable to accept their construction of this act, and I must hold that the legacies of \$500 each are subject to the tax."

In Pennsylvania, as we have already seen, an "estate" of less than \$250 is exempt,<sup>1</sup> but under this provision of the statute where the aggregate estate of the testator exceeds \$250, and there are legacies of less than that amount, they are appraisable and tax-

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<sup>1</sup> Chapter III, sec. 10.



able,<sup>1</sup> upon the theory that the word "estate" refers to the general property of the decedent, and not to the interest of the legatee, a result which is contrary to the construction placed upon a similar clause in the New York statute.<sup>2</sup>

As a general rule legacies given in payment for services rendered or for just debts owing by the decedent are not appraisable, as they are not liable to taxation.<sup>3</sup>

§. 4. *Remainders or future estates.*

(a). *Under Acts of Congress.*—Under the Acts of Congress in force until 1870, the right to appraise or tax contingent estates or remainders did not accrue until such estates vested in the actual possession and enjoyment of the tenant in remainder.<sup>4</sup>

(b). *Maryland and Connecticut.*—By the Maryland statute<sup>5</sup> the court having jurisdiction over the collateral inheritance tax is empowered, in its discretion, and at such time as it shall think proper, to determine what proportion the party entitled to the contingent interest shall pay of the tax, and its judgment is to be final and conclusive. Such court is also empowered to determine, in its discretion, from time to time, after the determination of the preceding

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<sup>1</sup> Com. v. Boyle, 2 Del. Co. Rep. 335.

<sup>2</sup> Chapter III, sec. 10.

<sup>3</sup> Est. of Rielly, N. Y. Law Jour. July 17, 1890; Chapter IV, sec. 6; Chapter VI, sec. 6.

<sup>4</sup> See Chapter VI, sec. 3 (b); Wright v. Blakeslee, 101 U. S. 104; Clapp v. Mason, 94 Id. 589; Mason v. Sargent, 104 Id. 689; U. S. v. Hazard, 8 Fed. Rep. 380; U. S. v. Bruce, Id. 381.

<sup>5</sup> Appendix, sec. 115.

estate, and as the remainder of said estate shall vest in the party entitled in remainder or reversion what proportion of the residue of the tax shall be paid by such parties in whom the estate shall so vest.

The clause of the statute which declares that the judgment of the orphan's court shall be final and conclusive applies only to the proportion of the tax which it is the duty of the said court to assess among the parties interested in the estate.<sup>1</sup>

In Connecticut the value of such contingent interest is ascertainable by the actuaries' combined experience tables and five per cent. compound interest.<sup>2</sup>

(c). *Pennsylvania statute*.—By the statute of this State,<sup>3</sup> now in force, it is provided, that in all cases where there has been or shall be a devise, descent or bequest to collateral relatives or strangers liable to the collateral inheritance tax to take effect in possession or coming into the actual enjoyment after the expiration of one or more life-estates or a period of years, the tax on such estate shall not be payable or interest begin to run until the person or persons liable for the same shall come into actual possession of such estate by determination of the estate for life or years, *and the tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner as aforesaid*. Provided that the owner shall have the right to pay the tax at any time prior to his coming into possession, and in such cases the tax shall be assessed on the value of the estate at the time of the payment of the tax after deducting the

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<sup>1</sup> Tyson v. State, 54 Md. 577.

<sup>2</sup> Appendix, sec. 12.

<sup>3</sup> L. 1887, Appendix, sec 3.

value of the life-estate or estate for years, and provided further, that the tax on real estate shall remain a lien on the real estate upon which the same is chargeable until paid,<sup>1</sup> and the owner of any personal estate shall make a full return of the same to the register of wills in the proper county within one year from the death of the decedent and within that time enter into security for the payment of the tax to the satisfaction of such register, *and in case of failure so to do, the tax shall be immediately payable and collectible.*

By further provision,<sup>2</sup> it is made the duty of the register of wills in the county in which letters testamentary or of administration are granted to appoint an appraiser as often as and whenever occasion may require, to fix the valuation of estates which are or shall be subject to collateral inheritance tax, and it shall be the duty of such appraiser to make a fair and conscionable appraisement of such estates.

This statute fails, however, to provide any standard for determining the value of contingent interests or remainders, and, as under the old law, the method of valuation seems to be left to the arbitrary discretion of the register of wills in each county. As we have seen the Carlisle tables are the guide commonly in use.<sup>3</sup>

The portions of the early statutes of Pennsylva-

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<sup>1</sup> The clause in the statute relating to the lien has been declared unconstitutional, or at least inoperative so far as foreign real estate is concerned. See Com's. App. (Bittinger's Est.), 129 Pa. St. 306; also Chapter II, secs. 5-18. See, also, as to lien, Chapter VIII, sec. 2.

<sup>2</sup> Sec. 12, Appendix.

<sup>3</sup> Goldstein's Est. 16 Phila. 319; Kaas's Est. 45 Leg. Int. 217.

nia<sup>1</sup> concerning estates in remainder and the appraisement thereof, are referred to in the notes.<sup>2</sup> They are of more or less value in arriving at an understanding of the condition of the law of that State with reference to the appraisement and taxation of estates in remainder,<sup>3</sup> because while the law since the

<sup>1</sup> See Del Busto's Est. 23 W. N. C. 111, where these statutes are collated and explained, per Penrose, J.; Mellon's App. 114 Pa. St. 572.

<sup>2</sup> For act of 1826, see Chapter VI, sec. 3, subd. (d).

<sup>3</sup> See 1 Purd. Dig. 10th ed. 215, 216. By Law of 1849, 579, it was provided:

Section 13: Where any person or persons shall bequeath or devise any estate, real or personal, to a father, widow or other person during life, and the remainder over to collateral heirs at their decease, immediately after the death of the testator, the estate so granted shall be appraised in the manner hereinbefore provided, and after deducting the valuation of said life-estate the collateral inheritance tax on the remainder shall be immediately due and payable over to the register of wills of the proper county, &c., &c.

By Law of 1850, 170, sec. 1, it was provided: That in all cases where there has been or shall be a devise, descent or bequest to collateral relatives or strangers liable to the collateral inheritance tax, to take effect in possession or to come into actual enjoyment after the expiration of one or more life-estates or period of years, it shall and may be lawful for the parties so liable for such tax to elect to wait their coming into the actual possession of the estate or property subject to the said tax and in such case shall give security to the register of the proper county for the payment thereof on the personal estate at such period as they or their representatives may come into possession, together with six per cent. per annum interest on the amount of the tax from the time the same accrues until paid, provided that such persons shall make a full return of such property within one year from the date thereof or within one year from the death of the decedent and within that period enter into such security to the satisfaction of the register, etc.

By act of 1855, sec. 1, 425, it was provided: That the penal-

act of 1826 has undergone considerable modification with reference to the taxation of remainders and contingent estates, so far as the act of 1887 is concerned, it has been expressly adjudged that that statute is, at most, but a mere codification of the former statutes and decisions of the Supreme Court, and, so far as it has been construed, it has been held to make little, if any substantial, change in the prior laws. How far this is so, as regards matters relating to the appraisement, remains to be determined.<sup>1</sup>

The adjudications which, from time to time, have been made under these statutes, with reference to the appraisement of estates in remainder may be best stated in the following order. How far the authorities conflict the writer does not pretend to say.

1. Under the early statutes in force prior to 1850,<sup>2</sup> estates in remainder, contingent or otherwise, were appraisable immediately upon decedent's death, and, after deducting the value of the life-estate, the tax was due and payable to the register of wills.<sup>3</sup>

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ty of interest shall only run from the time remainderman comes into possession . . . and if such legatee or devisee shall elect to pay said tax in anticipation of the same coming into actual possession and enjoyment, the same shall be received at the then valuation of the legacy or devise, deducting the value of the life-estate or term of years.

<sup>1</sup> See Com's. App. (Cooper's Est.), 127 Pa. St. 435; Com's. App. (Fagely's Est.), 128 Id. 603; Del Busto's Est. 23 W. N. C. 111.

<sup>2</sup> 1 Purd. Dig. 10th ed. 215.

<sup>3</sup> Com. v. Smith, 20 Pa. St. 100; Com. v. Eckert, 53 Id. 102; Mellon's App. 114 Id. 570; Com's. App. (Cooper's Est.), 127 Id. 427; Com's. App. (Fagely's Est.), 128 Id. 603; Willing's Est. 2 W. N. C. 307; James' App. 1887, 2 Del. Co. Rep. 164.

The object of the act of 1849 was to give a mode of making the appraisement.<sup>1</sup>

But in order to be appraisable at decedent's death the value of such estates, it seems, must then have been ascertainable, otherwise the register could make no appraisement of the estate in remainder.<sup>2</sup>

Where such estates were appraisable at decedent's death, so that the tax could be imposed upon the ascertained value of the estate, the statute of limitations then became operative against the commonwealth,<sup>3</sup> in favor of purchasers of the real estate upon which the tax was a lien.<sup>4</sup>

Estates in remainder or contingent estates were likewise subject to appraisement and taxation at the decedent's death under the North Carolina statute.<sup>5</sup>

In Pennsylvania, however, the taxation of such estates before they vested in actual possession and enjoyment and by which accrued interest and often heavy penalties in the nature of additional interest was charged, became oppressive and was felt to be unjust,<sup>6</sup> and was so declared in the preamble to one of the amendatory acts.<sup>7</sup>

2. As a result of this condition of the law two re-

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<sup>1</sup> James' App.; Com. v. Smith, *supra*.

<sup>2</sup> See Nieman's Est. 131 Pa. St. 346; Mellon's App. *supra*, 574; see Matter of Cager, 111 N. Y. 343.

<sup>3</sup> Mellon's App. *supra*.

<sup>4</sup> James' App. 2 Del. Co. Rep. 164; Cullen's Est. 26 W. N. C. 216.

<sup>5</sup> Atty. Gen. v. Pierce, 6 Jones' Eq. 240.

<sup>6</sup> Mellon's App. *supra*.

<sup>7</sup> P. L. 1850, 170.

medial statutes were passed, one in 1850,<sup>1</sup> and the other in 1855.<sup>2</sup>

By the former tenant in remainder was given the election to await his coming into the possession and enjoyment of his estate before paying the tax, in which case he was to give security for the payment of the tax to the register. It would seem, however, that this statute simply delayed payment of the tax and did not interfere with the appraisement of such estates on decedent's death.

By the act of 1855, it was provided that if such remaindermen elected to pay the tax in anticipation "such tax was to be received at the *then valuation* of the legacy or devise, deducting the value of the life-estate or term of years."

We have referred to these statutes in this connection merely in so far as they relate to the question of appraisement. Now, while it is evident that remaindermen were relieved from the payment of the tax at the decedent's death, and from onerous interest charges, it was, nevertheless, held that the tax still accrued at decedent's death, so far as the rights of purchasers were concerned, so as to bar the right of the Commonwealth to begin any proceeding after the expiration of twenty years from decedent's death, to enforce the statutory lien.<sup>3</sup>

It was suggested, however, before the decision in Mellon's App. that the object and intent of the statute of 1855 was not only to delay the payment until

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<sup>1</sup> *Supra.*

<sup>2</sup> P. L. 1855, 425.

<sup>3</sup> See Mellon's App. 1886, 114 Pa. St. 571, 572, and cases cited, *supra.*

the tenant in remainder came into possession, but also that the valuation of his estate should be made at that time, thus giving him the option of waiting until the value of his estate could be accurately ascertained before it could be appraised.<sup>1</sup>

Again, where decedent died and the tax was payable before the passage of the act of 1855 but none was imposed, and the life-tenant did not die until 1875, it was held that under the act of 1855 the tax was not payable until the estate vested in possession or enjoyment, but it continued a lien and should be appraised as of the date of decedent's death.<sup>2</sup>

In 1886 the question of appraisement of remainders came before the Supreme Court for consideration. "As previously provided for," said Sterrit, J.,<sup>3</sup> "the tax accrues upon the devolution of the estate that is subject thereto, and the law contemplates an appraisement as of that date not only for the purpose of ascertaining the tax on estates that vest in possession and enjoyment, *but also for the purpose of determining the amount of the tax to be paid on those whose actual possession and enjoyment are deferred until the expiration of the intervening estate or term of years.* . . . There was nothing to have prevented him (the register) from causing an appraisement of that interest and of the life-estate to be made, thereby ascertaining the value of the estate in remainder . . . and thus fixing the amount of the collateral inheritance tax. In the meantime the remainderman would

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<sup>1</sup> McGeary's Est. 1883, 14 P. L. J. N. S. 174.

<sup>2</sup> James' App. 1877, 2 Del. Co. Rep. 164; Cullen's Est. 26 W. N. C. 216.

<sup>3</sup> Mellon's App. 114 Pa. St. 572.



have had a right to anticipate payment and thus satisfy the lien by paying the tax and accrued interest thereon." In Mellon's App.,<sup>1</sup> however, no administration of the estate seems ever to have been had, and there was no election upon the part of the remaindermen to pay the tax when the estate vested in possession. The case would seem, however, to conflict with the earlier cases cited and serves to show that the right to an immediate appraisement on the part of the commonwealth was not taken away by the act of 1855.

Whether the rule as thus announced with respect to the appraisement of estates in remainder has been modified or changed by the recent statute of 1887, remains to be determined.

After postponing the payment of the tax until the estate vests in possession, the statute now provides that the tax shall be assessed upon the value of the estate "at the time the right of possession accrues to the owner as aforesaid." This provision does not seem to be contained in the earlier statutes and is, therefore, new. If the right of possession accrues "as aforesaid," that is at the time the estate actually vests in possession and enjoyment, and not upon decedent's death, then the manifest intention of the legislature would appear to be to postpone both the appraisement and the payment of the tax until the remainderman comes into possession.<sup>2</sup> If, therefore, the bond required by the statute is filed within the year the State would seem to lose the right to an immediate appraisement of estates in remainder, and

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<sup>1</sup> *Supra.*

<sup>2</sup> McGeary's Est. 14 P. L. J. N. S. 174.

to this extent the ruling in Mellon's App.<sup>1</sup> would appear to be modified. While the question was not presented, this view seems to be confirmed by the recent case of Commonwealth's Appeal,<sup>2</sup> where, in speaking of this portion of the act, the court said: "Where, therefore, the act declares that the tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner, or that the tax shall be assessed on the value of the estate at the time of the payment of the tax, it refers to the then *quantum* of the estate and not to the value of the land which may be a very different estate from that which passed from the decedent."

But the act declares,<sup>3</sup> in case of failure to file the bond within one year from decedent's death, the *tax shall be immediately payable and collectible*. It would seem that where such failure occurred it would afford strong evidence that the remainderman declined to elect to await the possession, and the commonwealth would seem to have the right to an appraisalment,<sup>4</sup> although there does not appear to be any provision of the statute providing for an appraisalment in such event. An appraiser, however, may be appointed as often as and whenever occasion may require, and under this clause it would appear that an appraisalment by the register could be had in such a case.

3. But while the State does not now seem to be entitled to a compulsory appraisalment of estates in remainder under the act of 1887, until the estate vests

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<sup>1</sup> *Supra*.

<sup>2</sup> Cooper's Est. 127 Pa. St. 435, 441.

<sup>3</sup> Sec. 3.

<sup>4</sup> See Willing's Est. 2 W. N. C. 307.

in possession or enjoyment, the remainderman is given the privilege or election of anticipating payment of the tax and thus has an immediate right to an appraisement of his interest in remainder:—

(a). Under the act of 1855 where the legatee or devisee elected to anticipate payment of the tax, the statute directed that the same should be received at the then valuation of the legacy or devise deducting the value of the life-estate or term of years.

(b). Under the act of 1887 the owner shall have the right to pay the tax at any time prior to his coming into possession, and the tax shall be assessed on the value of the estate at the time of payment of the tax after deducting the value of the life-estate or estate for years.

These two enactments seem to be substantially of the same purport, though couched in somewhat different language.

What is meant by the then valuation of the legacy or devise, under the act of 1855, has been declared to be its value as of the date it vested, the death of the decedent and the valuation of the estate in remainder is to be ascertained by deducting the value of the life estate or term of years from the value of the entire estate.<sup>1</sup>

Under this act, if tenant in remainder elected in anticipation to pay at the death of the decedent, the tax was appraisable on the then valuation of the entire estate less the value of the estate for life or years; that is, when the tenant of the intermediate estate was not liable, the tenant in remainder had the

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<sup>1</sup> Mellon's App. 114 Pa. St. 572.

election either to pay tax on the entire estate with interest when he came into actual possession, or to pay at the death of the decedent on the then net valuation of the estate in remainder, and in consideration of such anticipated payment her right to the tax on the intermediate estate was held to be waived by the commonwealth.<sup>1</sup>

So, under the act of 1887, if tenant in remainder desires to pay the tax at any time prior to his coming to the possession, it is to be assessed on the value of the estate at the time of the payment of the tax, after deducting the value of the life estate or term of years. The value of the estate of the remainderman depends upon the clear value of the estate passing from the person who died seized, and the probable duration of the preceding life estate.

If the life tenant is old, or his estate has already been enjoyed for a number of years, the tenant in remainder will not be kept out of his interest so long as otherwise, and the value of the estate will be greater.<sup>2</sup>

And, as we have already seen,<sup>3</sup> in estimating the clear value of the estate in remainder, outstanding debts and obligations owing by decedent at the time of his death must be taken into consideration, for they are a lien against his real estate, to satisfy which the land may be sold; hence the surplus or

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<sup>1</sup> Com's. App. (Cooper's Est.), 127 Pa. St. 435; Willing's Est. 1876, 2 W. N. C. 307; McGeary's Est. 14 P. L. J. N. S. 174.

<sup>2</sup> Com's. App. (Cooper's Est.), 127 Pa. St. 435; Mellon's App. 114 Id. 564.

<sup>3</sup> *Supra*, sec. 2.

net value of the remainder only is liable to taxation.<sup>1</sup>

Where payment of the tax is made after the possession accrues, the remainder is to be valued as of the date of possession.<sup>2</sup> And this is so whether the remainder arises by formal bequest or by operation of law.<sup>3</sup>

4. Under a recent ruling in Pennsylvania it has been held<sup>4</sup> that where the life tenant—a widow—has a power of disposition of the *corpus* of the estate during life, and there is a bequest to collaterals of the surplus that shall remain after her death, no tax can

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<sup>1</sup> Com's. App. *supra*, 440; Com's. v. Freedley, 21 Pa. St. 33.

<sup>2</sup> Com's. App. (Cooper's Est.), 127 Pa. St. 435. See Mellon's App. 114 Id. 572.

<sup>3</sup> McGeary's Est. 14 P. L. J. N. S. 174; citing Imp. Co. v. Com. 94 Pa. St. 453. It would appear to be to the advantage of the remainderman to anticipate payment of the tax instead of paying it at the time the estate vests in possession. This appears from the method which I am informed is adopted by the registers in Pennsylvania in assessing and taxing estates in remainder. For instance: if there is a devise of real estate worth \$5,000, subject to a life estate, and at the death of the testator the life tenant was 60 years old, reference to the Carlisle table will give figure 8,304, the product of which, multiplied by five per cent. (the rate directed by the court to be used by the register for this purpose) of \$5,000 (\$250), gives the value of the life estate, viz., \$2,076, the value of the remainder being the difference between that amount and \$5,000, viz., \$2,924. The life tenant would therefore have to pay the tax upon \$2,076, and if the remainderman wished to pay tax immediately he would have to pay it upon \$2,924 only, but if he did not pay the tax until the remainder vested—and he cannot be compelled to pay it before that time—he would have to pay it upon \$5,000. The practice under the old acts was to pay the tax annually upon the yearly value of the estate.

<sup>4</sup> Nieman's Est. 131 Pa. St. 346. See Mellon's App. *supra*.

be imposed upon the *residuum* until her death, as it is impossible to ascertain its amount or value, if any, until that time. The same result has been reached in New York.<sup>1</sup>

But where the widow has such power of disposition, and a valid trust is created of the residue for charitable purposes, it seems, the value of the life tenant's interest and of the amount necessary for her support being ascertainable by evidence, a tax may be imposed upon such residue.<sup>2</sup>

(*d*). *New York*.—Where in New York<sup>3</sup> the taxable interest shall be determinable upon any future or contingent event, or shall be a remainder, reversion or other expectancy, the entire property or fund by which such estate or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent at what was its fair and clear market value *at the death of the decedent*, and the value<sup>4</sup> of every future or contingent or limited estate, income or interest shall be determined by the standards of mortality and of value employed by the superintendent of the insurance department in ascertaining the value of policies of life insurance and annuities, and such superintendent shall, on the application of any surrogate, determine the value of such future or contingent or limited estate, income or interest upon the facts contained in the appraiser's

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<sup>1</sup> Matter of Cager, 111 N. Y. 343. See cases discussed, subd. (*a*), *post*.

<sup>2</sup> Brewer's Est. 15 P. L. J. N. S. 433, 435; 16 Id. 114.

<sup>3</sup> Appendix, statute, sec. 2.

<sup>4</sup> Statute, sec. 13. Prior to 1887 the Northampton tables were followed. See Matter of Robertson, 5 Dem. 92.

report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct.

Section 2 of this statute as originally enacted in 1885 was, it seems, taken from the early statutes of Pennsylvania in existence prior to 1855.<sup>1</sup> Under this statute it has been adjudged:

1. Vested remainders or estates, limited upon life estates or terms of years, are appraisable immediately upon the death of the decedent.<sup>2</sup>

2. Where, from the nature of the estate given to the life tenant or first taker, it is impossible at decedent's death to ascertain the fair market value of the estate in remainder until the death of the life tenant, no appraisement of such ultimate devise can be made at decedent's death.<sup>3</sup>

The leading case in New York on this subject is

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<sup>1</sup> See *supra*, p. 130, note.

<sup>2</sup> Matter of Vinot, 7 N. Y. Supp. 517; Matter of LeFever, 5 Dem. 184; Matter of Cogswell, 4 Id. 284; Matter of Higgins, N. Y. Daily Reg. Dec. 7, 1889; Matter of Hopkins, 6 Dem. 1, Est. of Van Rensselaer, N. Y. Law Jour. May 25, 1889.

<sup>3</sup> Matter of Cager, 111 N. Y. 342; Matter of Wallace, 18 N. Y. St. Rep. 387; Matter of Bruce, Id. 389. Form of orders in such cases given. Matter of Clark, 1 Con. Surr. Rep. 431; Matter of LeFever, 5 Dem. 184, distinguishing Matter of Cogswell, *supra*; Matter of Benjamin, N. Y. Daily Reg. Dec. 7, 1889; Matter of Hopkins, 6 Dem. 1; Matter of Higgins, *supra*; Est. of Fleming, N. Y. Law Jour. Oct. 15, 1889; Est. of Matthews, N. Y. Law Jour. July 27, 1889; Est. of Benet, N. Y. Law Jour. Mch. 4, 1889; Matter of Stewart, 30 N. Y. St. Rep. 738; Matter of Leavitt, 4 N. Y. Supp. 79. See Mellon's App. 114 Pa. St. 573, 574; McGeary's Est. 14 P. L. J. N. S. 174; Nieman's Est. 131 Pa. St. 346; Brewer's Est. 15 P. L. J. N. S. 433; 16 Id. 114.

that of Cager,<sup>1</sup> where the rule and method of valuation of such estates was stated by Ruger, C. J., as follows: "When the question as to whether any property at all shall pass under the limitation over, and if so, how much, depends upon the will of the first taker, we are unable to see any rule by which such value can be determined. In such a case there is no basis upon which the value of the devise can be appraised, and no foundation for the imposition of any tax, and the provision for the giving of the conditional bond therefor is wholly inapplicable."

In order that the tax may be imposed immediately upon the death of the decedent, two things are necessary: first, to determine definitely the fair market value of the property subject to the tax; and second, the person to whom such property passes.<sup>2</sup>

Where, therefore, there is a bequest to an exempt person for life, with a limited power of disposition over the *corpus* of the estate given to the life tenant, and with remainder over after his death of what shall remain, such remainder is not appraisable, as it is impossible to ascertain its value, if any, until the death of the life tenant, as the latter may use and dispose of the whole estate during his lifetime.<sup>3</sup>

Under this rule application for the appointment of an appraiser will be denied where the persons among

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<sup>1</sup> *Supra*.

<sup>2</sup> Matter of Clark, 1 Con. Surr. Rep. 433.

<sup>3</sup> Matter of Cager, 111 N. Y. 343; Matter of Hopkins. 6 Dem. 1; Est. of Fleming, N. Y. Law Jour. Oct. 15, 1889, and cases cited *supra*; Nieman's Est. 131 Pa. St. 346. But see Matter of Leavitt, 4 N. Y. Supp. 179; Brewer's Est. 15 P. L. J. N. S. 433; 16 Id. 114.



whom the estate is to be divided on the death of the life tenant, or the shares to which the legatees will be then entitled cannot be ascertained until such life tenant's death.<sup>1</sup> The same doctrine, as we have seen, has been recently announced in Pennsylvania.<sup>2</sup> But it seems when the amount necessary for the life tenant—a widow—can be ascertained and fixed, and there is a valid trust in remainder to charitable uses, although she may have a limited power of disposition, a tax is assessable upon the remaindermen.<sup>3</sup>

3. But where no appraisement can be had at decedent's death, and the contingent estate or remainder subsequently, on the death of the life tenant, actually vests in possession or enjoyment in a taxable heir or legatee, an appraisement will then be allowed and the tax imposed.<sup>4</sup>

In the *Matter of Cager*<sup>5</sup> it was held that where the present value of property which is devised to one with a limitation over to others upon the happening of some event which may or may not occur, can be ascertained, then a ground upon which an approximate estimate of the value of the ultimate devise appears and it may be made. In such a case the act

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<sup>1</sup> *Matter of Benjamin*, N. Y. Daily Reg. Dec. 7, 1889; *Matter of Stewart*, 30 N. Y. St. Rep. 738.

<sup>2</sup> *Nieman's Est. supra*.

<sup>3</sup> *Brewer's Est. supra*.

<sup>4</sup> *Matter of Wallace*, 18 N. Y. St. Rep. 387; *Matter of Bruce*, Id. 389; *Matter of Clark*, 1 Con. Surr. Rep. 431; *Matter of Leavitt*, 4 N. Y. Supp. 179; *Nieman's Est.*, 131 Pa. St. 346; *Matter of Stewart*, 30 N. Y. St. Rep. 738; distinguishing *Matter of Cager*, 111 N. Y. 350. See, also, *Com. v. Smith*, 20 Pa. St. 103; *McGeary's Est.* 14 P. L. J. N. S. 174.

<sup>5</sup> *Supra*.

enables a tax to be imposed and collected upon the ulterior devise through the medium of a bond to be given by the respective legatees when they come into possession of the devised property.

In cases of this character it was said in the Cager case that it was possible that no appraisement could be had afterwards if not allowed at the death of the decedent. This view of the law would seem, however, to be *obiter dicta*,<sup>1</sup> and the provision of the statute allowing an appraiser to be appointed as often as and whenever occasion may require was evidently overlooked.<sup>2</sup>

The intention of this clause must be to meet such cases in which no appraisement can be had upon decedent's death,<sup>3</sup> otherwise many estates fully within the intention of the act escape taxation.

In the Matter of Stewart,<sup>4</sup> a power of appointment was conferred upon the trustee by will, authorizing him to convey the property described in the power to certain persons, with a discretion as to the appointees. Four years afterwards he conveyed to certain of the legatees who were not exempt and in holding the property passing to them liable to the tax, Ransom, S., said: "It is true that at the date of the death of Mrs. Stewart, the appraiser could not determine either the value of the estate which might eventually become taxable or the persons to whom it would pass, and he could not, therefore, make any

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<sup>1</sup> See Matter of Stewart; Nieman's Estate, and cases cited *supra*.

<sup>2</sup> Appendix, sec. 13.

<sup>3</sup> See Com. v. Freedley, 21 Pa. St. 33; sec. 5. *post*.

<sup>4</sup> *Supra*.

appraisal. It has been the practice of this court to suspend all proceedings as to such contingent estates until such contingencies happen, with a view to the appointment of an appraiser at that time to make the appraisement.<sup>1</sup> . . . The claim that at the death of this decedent there was no estate that could be held subject to the tax and that, therefore, there could be no tax assessed now, cannot be sustained. It is a well settled principle of the law that where parties take under a power of appointment they take under the instrument creating the power, so that the parties named by H. under the power given him must be regarded as the persons selected by Mrs. Stewart."

4. Where the fund or legacy constituting such contingent estate or remainder is certain and fixed in amount but the person in whom it will eventually vest may never take the estate or remainder or it cannot be determined at decedent's death, whether the estate will vest in a taxable heir or legatee an appraisement may nevertheless be made at decedent's death, but the payment of the tax will be postponed until the estate actually passes in possession or enjoyment. In such case the tax cannot be imposed upon the principal fund in the possession of the exempt life-tenant, as he has a right to use such fund intact and unimpaired.<sup>2</sup>

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<sup>1</sup> Citing *Matter of Wallace*; *Matter of Clark*, *supra*.

<sup>2</sup> Cases cited, *supra*; *Matter of Clark*, 1 Con. Surr. Rep. 431; *Matter of Cager*, 111 N. Y. 343; *Matter of Stewart*, 30 N. Y. St. Rep. 738; see *Matter of Peck*, 30 N. Y. St. Rep. 239; but see *Matter of Johnson*, 6 Dem. 146; *Matter of Lavitt*, 4 N. Y. Supp. 179; *Matter of Benjamin*, N. Y. Daily Reg. Dec. 7, 1889.

Where, therefore, an annuity or legacy be contingent upon the annuitant surviving the life-tenant, or of the legatee reaching a certain age, they are appraisable upon decedent's death, but it being then impossible to determine to whom the property will go, the question as to whether the annuity or legacy is subject to taxation cannot be determined and should be suspended until the contingency does or does not happen. Upon the death of the tenant it can be determined to whom the property will pass and whether or not it will be subject to the tax.<sup>1</sup>

§ 5. *Effect of appraisement and appeals therefrom.*<sup>2</sup>

—An order confirming the report of the appraiser and determining the amount of the tax,<sup>3</sup> or an appraisement of property not appealed from in the manner prescribed by law becomes final and conclusive as well against the State as against the persons interested,<sup>4</sup> who had due and proper notice of the proceeding resulting in such appraisement,<sup>5</sup> where such appraise-

<sup>1</sup> Matter of Clark, 1 Con. Surr. Rep. 431; Matter of Wallace, 18 N. Y. St. Rep. 387; Est. of Matthews, N. Y. Law Jour. July 27, 1889; Matter of Stewart, *supra*.

<sup>2</sup> See, also, Chapter VIII, as to remedy and practice under these acts.

<sup>3</sup> Matter of Miller, 110 N. Y. 216; 19 N. Y. St. Rep. 247; 5 Dem. 119.

<sup>4</sup> Com. v. Freedley, 21 Pa. St. 33; Stinger v. Com. 26 Id. 420; Strode v. Same, 52 Id. 186; Matter of Astor, 6 Dem. 416; Matter of Miller, *supra*; Matter of Vanderbilt, 10 N. Y. Supp. 239; Matter of Keenan, 1 Con. Surr. Rep. 226. In Pennsylvania, it seems, no appeal can be sustained from the appraiser's assessment, unless the record before him shows *prima facie* error. Goldstein's Est. 16 Phila. 319.

<sup>5</sup> Id.; see, also, Matter of Vanderbilt, *supra*; Matter of McPherson, 104 N. Y. 306.

ment has been made in good faith and without any mistake, fraud or concealment on the part of the appraiser or of the persons interested in the property.<sup>1</sup>

But where pending an appeal from the appraiser's report the parties liable to the tax under the decree of the lower court make payment of it, this does not estop the State from prosecuting the appeal and recovering interest upon the tax from the date of payment.<sup>2</sup>

And where the liability of an alleged gift to be taxed was in dispute, on which account the decision of the appraiser was suspended and he subsequently decided that it was liable, the right of appeal only runs from the latter date.<sup>3</sup>

The appraisement, it seems, is conclusive as to the value of the estate, but not as to its liability to taxation.<sup>4</sup>

The failure of the State to commence proceedings for the ascertainment and ultimate collection of the tax due to the fact that there was no administration of decedent's estate, and thus the matter was not brought to the attention of the register, creates no exception to the law, so far as *bona fide* purchasers are concerned; limiting the right to commence such proceedings to a certain period of time.<sup>5</sup>

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<sup>1</sup> Matter of Astor, 6 Dem. 416; Matter of Keenan, 1 Con. Surr. Rep. 226; Com. v. Freedley, 21 Pa. St. 33, and see Atty.-Gen. v. Dardier, L. R. 11 Q. B. D. 20.

<sup>2</sup> Com.'s App. (Fagely's Est.), 128 Pa. St. 603.

<sup>3</sup> Fosselman's App. 2 Pennypacker, 240; see McGeary's Est. 14 P. L. J. N. S. 174.

<sup>4</sup> Stinger v. Com. 26 Pa. St. 424; Strode v. Com. 52 Id. 186; Tyson v. State, 54 Md. 577.

<sup>5</sup> Mellon's App. 114 Pa. St. 564; and see James' App. 2 Del. Co. Rep. 164; Cullen's Est. 26 W. N. C. 216.

In Maryland, where the court is authorized to determine, in its discretion, the amount of the tax against life tenant, annuitant and remainderman, its judgment is, by statute,<sup>1</sup> made final and conclusive; but this would seem to refer only to the amount of the tax or the value of the estate, and not to the question of liability.<sup>2</sup>

How often can an appraisement be made, and what is the effect of a subsequent increase in the value of the property appraised, and, incidentally, of fraud, mistake, concealment or omission? Both the Pennsylvania and the New York statutes allow the appointment of an appraiser as often as and whenever occasion may require. In *Commonwealth v. Freedley*<sup>3</sup> an appraisal had been made on behalf of the State, and the tax assessed thereon. Subsequently the appraised property increased greatly in value, and the State sought to tax this increase. The opinion of Woodward, C. J., in deciding against the claim, would seem to be of general application. He said:<sup>4</sup> "That the assessment of the appraiser is to be final if not appealed from is shown by the act declaring that it is made to *fix* the valuation of the real estate; that the appraisement of a personal estate is to be fair and conscionable, and that the tax on annuities and life estates is to be immediately payable out of the estate at the rate of such valuation. But property subject to the tax may be fraudulently concealed, incidentally overlooked; or it may not be known to the representatives of the decedent at the

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<sup>1</sup> Appendix, sec. 115.

<sup>2</sup> *Tyson v. State, supra.*

<sup>3</sup> *Supra.*

<sup>4</sup> Page 36.

time of the appraisement, and therefore the register is to appoint an appraiser 'as often as and whenever occasion may require.' Whenever portions of the estate come to light after the first appraisement, they are to be appraised in the same manner, but as to such portions as were the subject of the appraisement the 'clear value' is fixed and the law assesses the tax. . . . Such is the system provided for collateral inheritance taxation, and it does not admit of opening to take in additions to the clear value of property once assessed. That property is vested in the heir or devisee. If it appreciates after it comes to him, it is his good luck; if it depreciates, it is his misfortune. But as the State would not submit to a re-adjustment for the purpose of diminishing her taxes in the event of subsequent depreciation, she is not entitled to a re-adjustment for the purpose of increasing it by reason of an advance in the market value of the estate after an assessment by officers of her own appointment, with the right of appeal.<sup>1</sup> The commonwealth is as much subject to the rules of equity and justice as her citizens. She possesses the taxing power, but when it has been fairly employed according to her own dictation, it is spent and gone."<sup>2</sup>

Seemingly in direct antagonism to *Commonwealth v. Freedley* is a case under the English legacy act, but it turned, in reality, upon the construction of language not contained in the American statute.<sup>3</sup>

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<sup>1</sup> See *Est. of Bird*, N. Y. Law Jour. July 28, 1890.

<sup>2</sup> See, also, *Coleman v. Com.* 52 Pa. St. 468; *Stinger v. Com.* 26 Id. 425; *Com's. App. (Cooper's Est.)*, 127 Pa. St. 435; 17 Atl. 1096. See *Matter of Vanderbilt*, 10 N. Y. Supp. 239; *Est. of Bird*, *supra*.

<sup>3</sup> *Atty.-Gen. v. Dardier*, L. R. 11 Q. B. D. 16. But see *Atty.-Gen. v. Sefton*, 11 H. L. Cases, 257.

In *Attorney-General v. Dardier*, to which we refer,<sup>1</sup> certain valuable pictures were devised as a specific legacy; a duty had been accepted by the Crown upon a low valuation, apparently made in good faith, between the taxing commissioners and the executors. Subsequently the executors sold the pictures at a large advance, and it was held<sup>2</sup> that notwithstanding these facts the Crown was entitled to further duty upon the increase, although there was no fraud upon the part of the executors. Pollock, B., treated the first appraisement as having been made under a common mistake upon the part of both parties—that the pictures were not to be sold—which, being discovered, entitled the Crown to duty upon the actual value of the proceeds of the property when sold.

So where property was omitted by mutual mistake from the appraisement, a further appraisement was allowed thirteen years afterwards, but the executors were relieved from penalty.<sup>3</sup>

It seems a certified receipt of the county treasurer or comptroller of the county where jurisdiction was first acquired will be full protection to any subsequent purchaser of such land as against any claim for the tax.<sup>4</sup>

The great age of a life tenant whose share is subject to taxation affords no reason for postponing the confirmation of the appraiser's report.<sup>5</sup>

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<sup>1</sup> *Supra*.

<sup>2</sup> Under 53 Geo. III, ch. 52, sec. 22.

<sup>3</sup> *Brewer's Est.* 16 P. L. J. N. S. 114; 15 Id. 435; *Com's. App.* (*Fagely's Est.*), 128 Pa. St. 613. See *Matter of Keenan*, 1 Con. Surr. Rep. 226; *Matter of Astor*, 6 Dem. 416; *Fosselman's App.* 2 Pennypacker, 240.

<sup>4</sup> *Matter of Keenan*, *supra*.

*Est. of Wilkes*, N. Y. Law Jour. Oct. 31, 1889.



In New York the surrogate is not bound by the appraiser's report, but may take such further evidence as he deems proper, and base his decision thereon.<sup>1</sup>

Such report is not final. It is to aid the surrogate to decide what property is liable to the tax, and it is subject to confirmation, revision or rejection by the surrogate.<sup>2</sup> And where all papers are not submitted to the appraiser before he makes his report, the proceeding will be remitted to him to proceed *de novo*.<sup>3</sup>

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<sup>1</sup> Matter of McPherson, 104 N. Y. 323; Est. of McGowan, N. Y. Law Jour. July 30, 1890. But see Matter of Vanderbilt, 10 N. Y. Supp. 239.

<sup>2</sup> Est. of McGowan, *supra*.

<sup>3</sup> Est. of Jones, N. Y. Law Jour. July 31, 1890.

## CHAPTER VI.

### VESTED AND CONTINGENT ESTATES, TRANSFERS *INTER VIVOS*, POWERS AND LEGACIES.

- § 1. Life estates, annuities and joint tenancies.
2. Relative rights of life tenant and remainderman.
3. Remainders and future estates.
  - (a) Under English statutes.
  - (b) Acts of Congress.
  - (c) New York statutes.
  - (d) Under Pennsylvania statutes.
4. Fraudulent transfers, trusts and gifts *inter vivos*.
5. Powers of appointment.
6. Legacies for debts and other obligations.

§ 1. *Life estates, annuities and joint tenancies.*—We have already considered the general nature and constitutionality of collateral inheritance, legacy and succession tax laws,<sup>1</sup> and of the exemptions from taxation under such laws,<sup>2</sup> including questions relating to the domiciliary condition either of person or property with respect to this tax.<sup>3</sup> So the various provisions of law relating to the appraisement or valuation of property under these statutes have been considered in the preceding chapter.

In the present chapter, in addition to the consideration of the liability of both vested and contingent estates or remainders, it has also been deemed proper

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<sup>1</sup> Chapters I, II.

<sup>2</sup> Chapter III.

<sup>3</sup> Chapter IV.

to include several other important topics, such as fraudulent or intentional transfers, trusts and gifts *inter vivos* to evade the tax,<sup>1</sup> powers of appointment,<sup>2</sup> and legacies in payment of debts and other obligations.<sup>3</sup>

Cases embracing a right or power of disposition in the life tenant, where the remainderman is not exempt, and involving relative rights of life tenant and remainderman, have likewise been considered in the present chapter.<sup>4</sup>

The general rule is that the tax due by tenant for life is payable immediately when distribution is or should be made, and if payment is delayed the consequence must fall on him, and not upon the remainderman.<sup>5</sup>

So where there is a bequest of a fund in trust for one during life, with remainder to others, the tax is payable forthwith on the life estate out of accruing income, and on the principal when the life estate has fallen.<sup>6</sup> The tax should be upon the clear value of the life estate at the testator's death, and not upon the value of the property when it is assessed.<sup>7</sup>

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<sup>1</sup> *Post*, sec. 4.

<sup>2</sup> *Id.* sec. 5.

<sup>3</sup> *Id.* sec. 6.

<sup>4</sup> See sec. 2, *post*; sec. 3, subds. (c) and (d), and *Matter of Cager*, 111 N. Y. 343; *Nieman's Est.* 131 Pa. St. 346.

<sup>5</sup> *Wharton's Est.* 10 W. N. C. 106.

<sup>6</sup> *Christian's Est.* 2 P. C. R. 91; *Matter of Johnson*, 6 Dem. 146; *Welling's Est.* 2 W. N. C. 307, 308; *Wharton's Est. supra*; *Thomson's Est.* 12 Phila. 131; *Forbes' Est.* 16 *Id.* 356; *Com's. App. (Cooper's Est.)*, 127 Pa. St. 438.

<sup>7</sup> *U. S. v. Penn. Co.* 9 Ben. 413; *Matter of Leavitt*, 4 N. Y. Supp. 179; 22 N. Y. St. Rep. 81; Chapter IV, sec. 6.

An annuity is an estate within the meaning of these statutes.<sup>1</sup> The liability of such annuities to the tax is not affected by the fact that the income applied to their payment must be paid out of and is likely to diminish the principal fund.<sup>2</sup>

On the other hand it has been held that where the life tenant is an exempt person, there is no principle upon which the fund in his hands—and which he has the right to enjoy intact—can be appropriated for the purpose of paying a tax upon contingent annuities before the death of the life tenant,<sup>3</sup> unless expressly directed by will;<sup>4</sup> as where the gift was of a net annual sum of \$1,200, and its payment was directed to be made quarterly in sums of \$300, with the reservation of a principal sum out of the investments of the decedent's estate ample to yield a net income of \$1,200 per annum, the tax falls upon the residue, and not upon the annuitant.<sup>5</sup>

Under the New York statute it has been held that where it is impossible to ascertain the person to whom such annuities will be payable until the death of the life tenant, they are not taxable until such death.<sup>6</sup>

So it has recently been held that the interest of a wife in real estate devised to herself and husband as tenants by the entirety is taxable during the husband's lifetime, as her interest is vested and certain

<sup>1</sup> Bispham's Est. 46 Leg. Int. 98; Thomson's Est. 5 W. N. C. 19.

<sup>2</sup> Est. of Leavitt, *supra*; Matter of Johnson, 6 Dem. 146.

<sup>3</sup> Matter of Clark, 1 Con. Surr. Rep. 431; Matter of Hopkins, 6 Dem. 1. See Matter of Peck, 24 Abb. N. C. 365, note. See, also, Christian's Est. 2 P. C. R. 91, and cases cited *supra*.

<sup>4</sup> See cases *post*, sec. 6.

<sup>5</sup> Bispham's Est. *supra*.

<sup>6</sup> Matter of Clarke, *supra*; and cases *post*, sec. 3, subd. (c).

and she may, by statute,<sup>1</sup> compel partition of the property.<sup>2</sup> The statute has been construed at law, however, as only allowing the wife to claim partition where the husband agrees thereto.<sup>3</sup> But the estate of the wife, as tenant by the entirety, being in the nature of a vested remainder which she could not be deprived of by any act of her husband, would seem to be a taxable interest under the statute, notwithstanding her husband should refuse to join in partition proceedings.

In England the liability of joint tenants for this tax is specially regulated by statute.<sup>4</sup>

§ 2. *Relative rights of life tenant and remainderman.*—The estate of tenant for life and that of remainderman are to be considered distinct and separate, and neither is to be affected by the tax, interest or penalty to be paid by the other.<sup>5</sup> Hence tenant for life is entitled to the enjoyment of the entire estate while he lives, he paying only the tax assessed upon the value of such estate, while tenant in remainder, when he shall come into the possession and enjoyment, is entitled to it without other deduction than the tax paid by himself, and such interest as may

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<sup>1</sup> L. N. Y. 1880, ch. 472.

<sup>2</sup> Est. of Higgins, N. Y. Daily Reg. Dec. 7, 1889; distinguishing Matter of LeFever, 6 Dem. 154; Matter of Hopkins, 6 Id. 1, and citing Willing's Est. *supra*.

<sup>3</sup> O'Connor v. McMahon, 54 Hun, 66. See, also, Stetz v. Schreck, 32 N. Y. St. Rep. 133; Beach v. Hollister, 3 Hun, 519; Newell v. Newell, L. R. 7 Ch. App. 253.

<sup>4</sup> 36 Geo. III, ch. 52, sec. 15; 16 and 17 Vict. ch. 51, sec. 3. See Chapter I, p. 11, note.

<sup>5</sup> Com's. App. (Cooper's Est.), 127 Pa. St. 438; 17 Atl. 1095.

have accrued thereon. The tax upon the tenant for life being chargeable, as we have seen, out of the income belonging to him, and that of the remainderman out of the valuation of his remainder.<sup>1</sup> Hence, on a bequest of a fund in trust for one during life, with remainder to others, the tax is payable on the life estate forthwith out of accruing income, and on the principal when the life estate has fallen.<sup>2</sup>

Where the interest of the life beneficiary is not taxable, and that of the remainderman is, it has been held in New York that the amount of the remainderman's tax is lawfully payable out of the principal notwithstanding the tax on the remainder will reduce the capital, and so affect the income of the life tenant;<sup>3</sup> but the authorities upon this point in that State are not harmonious,<sup>4</sup> and, in view of the adjudications in Pennsylvania, the rule by which the exempt life tenant's interest is impaired for the purpose of imposing a tax upon the remainderman would seem to be of doubtful propriety. Under the Pennsylvania statute it is held that even where both tenant for life and the remainderman are taxable, the only tax demandable upon decedent's death is that upon the outstanding life estate, to be paid by the

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<sup>1</sup> Wharton's Est. 10 W. N. C. 105; 14 Phila. 279; Forbes' Est. 16 Id. 356; Com's. App. (Cooper's Est.), *supra*; Thomson's Est. 12 Phila. 131; Christian's Est. 2 P. C. R. 91; Matter of Johnson, 6 Dem. 146; Est. of Leavitt, 4 N. Y. Supp. 179; Matter of Clark, 1 Con. Surr. Rep. 431.

<sup>2</sup> Christian's Est. *supra*; Matter of Johnson, *supra*.

<sup>3</sup> Matter of Johnson, *supra*; Est. of Leavitt, *supra*. See Matter of Peck, 30 N. Y. St. Rep. 209; and note to 24 Abb. N. C. 365.

<sup>4</sup> See, *contra*, Matter of Hopkins, 6 Dem. 1; Matter of Clark, *supra*; note, 24 Abb. N. C. *supra*.

life tenant alone or charged against her income; and it is optional whether tenant in remainder pays the tax in anticipation of his estate accruing or at the time it actually comes into possession.<sup>1</sup> Whether tenant in remainder will avail himself of the privilege of anticipating payment is a matter which he alone, or his trustee for him, should determine.<sup>2</sup>

Where tenant for life is exempt the whole tax is payable by tenant in remainder, and in such case the time of payment merely is postponed<sup>3</sup> until the estate comes into actual possession.<sup>4</sup> If he elect to pay at the death of the decedent the tax is assessable at the time of payment on the then valuation of the entire estate, less the value of the life estate or term of years,<sup>5</sup> the cases in connection with which subject have been considered in the chapter on appraisement.<sup>6</sup>

### § 3. *Remainders and future estates.*

(a). *Under the English statutes.*—Under the perfect system of the English law all interests vested and contingent and whether passing by will, intestate law or by deed *inter vivos*, or otherwise, are at some time made subject to taxation under these statutes.

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<sup>1</sup> Wharton's Est. *supra*; Willing's Est. 2 W. N. C. 307, 308.

<sup>2</sup> Id.

<sup>3</sup> But by act of 1887 (Appendix, sec. 2) the appraisement seems also to be now postponed. See Chapter V, sec. 4, subd. (c).

<sup>4</sup> Wharton's Est. 10 W. N. C. 105; Willing's Est. 2 Id. 307, 308.

<sup>5</sup> Com.'s. App. (Cooper's Est.), 127 Pa. St. 435; 17 Atl. 1095; affg. Com. v. Cooper, 5 P. C. R. 275; Mellon's App. 114 Pa. St. 572.

<sup>6</sup> Chapter V, sec. 4, subd. (c).

Layton says:<sup>1</sup> "To whatever medium a person may resort, will, deed, bond, etc., for the disposition of his real and personal estate on his death, such property is now chargeable with duty, nor does the nature of the instrument in the least affect the payment of the tax. The provisions are of a most comprehensive and searching character, so much so that it is difficult to imagine a transaction or dealing with property to take effect upon a death after the 19th of May, 1853, that will elude its operation, general or special."<sup>2</sup>

The duties are to be paid on the successor or any person in his right or on his behalf becoming entitled in possession,<sup>3</sup> unless the title to the succession is accelerated by the extinction or surrender of any prior interest, in which case the duty is to be paid at the same time and in the same manner as if no acceleration had taken place.<sup>4</sup>

(b). *Under Acts of Congress.*—Under the Acts of Congress,<sup>5</sup> in force until the year 1870, the tax was only due and payable upon such interests in remainder when the beneficiary became entitled to the pos-

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<sup>1</sup> Legacy and Succession Taxes, 7th ed. 110, 111, 122 *et seq.*

<sup>2</sup> See, as to contingent interests, 36 Geo. III, ch. 52, sec. 17; 16 & 17 Vict. ch. 51, secs. 2, 20, 35.

<sup>3</sup> 16 & 17 Vict. *supra*, sec. 20.

<sup>4</sup> Id. sec. 15; Trevor's Taxes on Successions, 4th ed. 189; see Lord Adv. v. McDonald, 24 Sco. Sess. Cas. 2 Ser. 1175; Atty.-Gen. v. Middleton, 3 H. & N. 125; Wilcox v. Smith, 4 Drew, 40; 26 L. J. Ch. 596. The executor is allowed to commute duties upon contingent interests under 43 Vict. ch. 14, secs. 10, 11.

<sup>5</sup> 13 U. S. Stat. 287, secs. 125, 126; 16 Id. 256, sec. 127; see secs. 3438, 3439 U. S. Rev. Stat. 2d ed. 1878; and Chapter I, p. 12.



session and enjoyment of the estate, or to the beneficial interest in the profits arising therefrom, hence it was held that estates in remainder were not taxable until the successor became entitled to the possession or enjoyment or the expectancy terminated, and legacies which did not vest in possession or enjoyment until after the act was repealed were not liable.<sup>1</sup>

Under these acts<sup>2</sup> a succession was defined to denote the devolution of the title of any real estate, hence it was conferred where the following conditions occurred: A past disposition of real estate by will, deed, or the laws of descent, by reason of which the person taxed became beneficially entitled, in possession or expectancy, to the real estate or income thereof, and by which the person so taking became so entitled upon the death of the person making such disposition, and that the grantor died after the passage of the imposing act.<sup>3</sup>

Hence, where an estate for the life of another was given to trustees with a remainder in fee to the children of such life-tenant surviving her, a succession was created under these acts and the tax was due and payable at her death.<sup>4</sup>

A succession tax was, however, imposed where the life-tenant accelerated the succession by an ami-

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<sup>1</sup> Wright v. Blakeslee, 101 U. S. 174; Clapp v. Mason, 94 Id. 589; Mason v. Sargent, 104 Id. 689; U. S. v. Hazard, 8 Fed. Rep. 380; U. S. v. Bruce, Id. 381; and see Chapter V, sec. 4.

<sup>2</sup> June 30, 1864, ch. 126; 13 U. S. Stat. secs. 125, 126; 16 Id. 256, sec. 127.

<sup>3</sup> Blake v. McCartney, 4 Cliff, 401; Wright v. Blakeslee, *supra*.

<sup>4</sup> Wright v. Blakeslee, *supra*.

cable agreement dividing the estate between herself and the remainderman.<sup>1</sup>

(c). *Under the New York statute.*—The original New York statute, passed in 1885,<sup>2</sup> was early criticised as being imperfect and impracticable of enforcement in many instances and especially with respect to contingent remainders or future estates,<sup>3</sup> while its provisions, as borrowed from the early statutes of Pennsylvania, have been characterized as harsh and oppressive. These strictures have to a limited extent proved to be just, but the practical workings of the statute have shown better results than were at first anticipated, and there is no doubt that if the statute is properly enforced its provisions will be generally found sufficient to embrace all estates of whatsoever nature or character.

In respect to estates in remainder, however, it would seem to be just that not only the payment of the tax but the appraisement of the estate in remainder should only take place when such estate vests in possession, giving the remainderman the right, however, of anticipating payment.

As amended<sup>4</sup> the statute subjects to the tax all property in trust or otherwise by the devolution of which any person or body politic shall become bene-

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<sup>1</sup> *Brune v. Smith*, 13 Inter. Rev. Rec. 54; *Ex parte Stitwell*, 59 L. T. Rep. 539; but see *Paige v. Rieves*, 1 Hughes, 297.

<sup>2</sup> L. 1885, ch. 483; see Appendix for Laws 1887. See note on contingent remainders, by Austin Abbott, Esq. 19 Abb. N. C. 234; 24 Id. 365.

<sup>3</sup> See *Matter of McPherson*, 104 N. Y. 324; *Matter of Cager*, 111 Id. 350.

<sup>4</sup> L. 1887, ch. 713, see Appendix.

ficially entitled in possession or expectancy,<sup>1</sup> upon the testator's or grantor's death, and where any devolution<sup>2</sup> shall be an estate income or interest for a term of years or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion or other expectancy, real or personal, it shall

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<sup>1</sup> The following are some of the provisions of the N. Y. Rev. Stats. Banks' 8th ed. vol. 4, 2431, defining vested and contingent estates:

SEC. 7. Estates as respects the time of their enjoyment are divided into estates in possession and estates in expectancy.

SEC. 8. An estate in possession is where the owner has an immediate right to the possession of the land; an estate in expectancy is where the right to possession is postponed to a future period.

SEC. 9. Estates of expectancy are divided into (1) estates commencing at a future day denominated future estates, and (2) reversions.

SEC. 10. A future estate is an estate limited to commence in possession on a future day either without the intervention of a precedent estate or on the determination by lapse of time or otherwise of a precedent estate created at the same time.

SEC. 11. When a future estate is dependent upon a precedent estate it may be termed a remainder and may be created and transferred by that name.

SEC. 12. A reversion is the residue of an estate left in the remainderman or heirs or in the heir of the testator commencing in possession on the determination of a particular estate granted or devised.

SEC. 13. Future estates are either vested or contingent. They are vested when there is a person who would have an immediate right to the possession of the lands upon the ceasing of the intermediate or precedent estate. They are contingent whilst the person to whom or the event upon which they are limited to take effect remains uncertain. . . .

SEC. 35. Expectant estates are descendible, devisable and alienable in the same manner as estates in possession.

<sup>2</sup> Id. L. 1887, sec. 2.

be appraised immediately after the decedent's death at its fair and clear market value at the time of death, and its value determined by the surrogate, and the tax thereon shall be immediately due and payable,<sup>1</sup> provided that the persons beneficially interested in the property, chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, in which case they shall execute and file a bond<sup>2</sup> to be given to the people of the State in a penalty of three times the amount of the tax arising upon personal estate conditioned for the payment of the tax and interest at such time or period as they or their representatives may come into the actual possession or enjoyment of such property. And the act further provides that they shall make a full verified return of such property to the surrogate within one year from the death of the decedent and within that period enter into such security and renew the same every five years.

From the fact that the statutes of New York and Pennsylvania, although in many respects alike, are, with respect to the rights of remaindermen, in many respects substantially different, it is difficult to say to what extent the decisions of the Pennsylvania courts will be found applicable to cases arising under the former act.

The liability of remaindermen may be briefly summarized in the following order, although it must

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<sup>1</sup> But see as to payment *Matter of Clark*, 1 Con. Surr. Rep. 435; *Matter of Peck*, 30 N. Y. St. Rep. 209; s. c. 24 Abb. N. C. 368, and note.

<sup>2</sup> See *Matter of Peck* and cases, *supra*.

be said that many, if not most, of the questions discussed remain undetermined by the higher courts:

1. So far as vested remainders or estates are concerned, the tax upon them is held to be due and payable immediately upon decedent's death.<sup>1</sup>

Where a wife was, with her husband, tenant by the entirety of certain real estate under decedent's will, her interest, being certain and ascertainable, and being substantially that of a vested remainder under the statute, is taxable during her husband's lifetime, especially as by law<sup>2</sup> she has power to make immediate partition of her share.<sup>3</sup>

2. Where, as we have seen,<sup>4</sup> for any reason it becomes impossible to appraise or value at decedent's death any contingent or future estate, devised to take effect upon the termination of a preceding estate or upon any uncertain event, no tax can then be imposed upon such contingent interest.<sup>5</sup>

<sup>1</sup> Matter of Vinot, 7 N. Y. Supp. 517; Est. of Van Rensselaer, N. Y. Law Jour. May 28, 1889; Matter of Cogswell, 4 Dem. 284; Matter of LeFever, 5 Id. 184; Matter of Higgins, N. Y. Daily Reg. Dec. 7, 1889. See Com. v. Smith, 20 Pa. St. 100; Com. v. Eckert, 53 Id. 105; Nieman's Est. 131 Pa. St. 346.

<sup>2</sup> L. N. Y. 1880, ch. 472.

<sup>3</sup> Matter of Higgins, *supra*. But see, as construing this statute, O'Connor v. McMahon, 54 Hun, 56; Stetz v. Schreck, 32 N. Y. St. Rep. 133; Beach v. Hollister, 3 Hun, 519. See Newell v. Newell, L. R. 7 Chanc. App. 253.

<sup>4</sup> Chapter V, sec. 4, subd. (d).

<sup>5</sup> Matter of Cager, 111 N. Y. 343; Matter of LeFever, 5 Dem. 184; Matter of Wallace, 18 N. Y. St. Rep. 387; Matter of Bruce, Id. 389. Form of order in such cases given. Matter of Cogswell, 4 Dem. 248; Matter of Hopkins, 6 Id. 1; Matter of LeFever, 5 Id. 24; Matter of Surrogate of Cayuga, 46 Hun, 657; Matter of Clark, 1 Con. Surr. Rep. 431; 5 N. Y. Supp. 199; Est.

In such cases the provisions of the statute requiring the remainderman to file a conditional bond have no application.<sup>1</sup> Substantially the same rule has been recently adopted in Pennsylvania.<sup>2</sup>

In the *Matter of Cager*,<sup>3</sup> which is the leading case upon this subject, decedent, Cager, left a life estate to his widow in the property devised, giving her, however, a limited power of disposition during life over the *corpus* of the estate, with remainder over of what should remain to collateral heirs, and it was ruled that as she had power during life to dispose of the whole estate by any means except by will, any interest in the other legatees was wholly dependent upon whether the power of disposition<sup>4</sup> was exercised by the life tenant during her lifetime,<sup>5</sup> and that while

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of Fleming, N. Y. Law Jour. Oct. 15, 1889; *Matter of Benjamin*, N. Y. Daily Reg. Dec. 7, 1889.

<sup>1</sup> *Matter of Cager*, *supra*, 349, 350.

<sup>2</sup> *Nieman's Est.* 131 Pa. St. 346. But see *Brewer's Est.* 15 P. L. J. N. S. 433, 435; 16 Id. 114.

<sup>3</sup> *Supra*.

<sup>4</sup> By N. Y. Rev. Stat. Banks' 8th ed. 2446, it is provided:

Section 81. Where an absolute power of disposition not accompanied by any trust shall be given to the owner of a particular estate for life or years, such estate shall be changed into a fee absolute in respect to the rights of creditors or purchasers, but subject to any future estate limited thereon in case the power should not be executed, or the lands should not be sold for the satisfaction of debt.

Section 85. Every power of disposition shall be deemed absolute by means of which the grantee is able in his lifetime to dispose of the entire fee for his own benefit.

<sup>5</sup> Citing *Van Horn v. Campbell*, 100 N. Y. 287; *Smith v. Van Nostrand*, 64 Id. 278; *Ferry v. Wiggins*, 47 Id. 512. See, also, *Matter of LeFever*, 5 Dem. 24. As to what constitutes power of disposition in life tenant, see *Flanagan v. Flanagan*, 8 Abb. N. C.

it was possible that the remaindermen might eventually take a valuable estate under the will, that event being contingent upon the non-exercise by the widow of the power of disposition, rendered the present appraisable value of such interest impossible of any correct or reasonable approximate valuation, and hence it was not liable to taxation. The court said: "When the question as to whether any property at all shall pass under the limitation over, and if so, how much, depends upon the will of the first taker, we are unable to see any rule by which such value (of the contingent estate) can be ascertained."

In such cases it was held that there being no basis upon which the value of the devise over could be appraised, there was no foundation for the imposition of the tax.<sup>1</sup>

So where the widow, as life tenant, has a right to use the principal to make up a deficiency in the income allowed her under the will, and it appears that the whole estate may be absorbed during her lifetime, there can be no taxation of the remainder.<sup>2</sup>

And where decedent bequeathed the residue of her estate to her executor, in trust to collect, invest and pay the net income to her brother for life, with discretionary power to expend certain sums annually for his support, with remainder to collaterals, the court said:<sup>3</sup> "It is impossible to determine how long he

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416; *Wager v. Wager*, 96 N. Y. 174; *Livingstone v. Murray*, 68 Id. 496; *Ackerman v. Gorton*, 67 Id. 63; *Haynes v. Sherman*, 117 N. Y. 433; *Thomas v. Welford*, 21 Abb. N. C. 231.

<sup>1</sup> *Matter of Cager*, 111 N. Y. 349, 350.

<sup>2</sup> *Est. of Fleming*, N. Y. Daily Reg. Oct. 15, 1889. See *Matter of Leavitt*, 4 N. Y. Supp. 179; 22 N. Y. St. Rep. 354.

<sup>3</sup> *Matter of Hopkins*, 6 Dem. 1; 19 N. Y. St. Rep. 516.

(the life tenant) may live, and how much of the principal fund may be used for him by the executor in the exercise of the limited discretion conferred upon him by will; indeed, it is possible that the whole *residuum* may be exhausted in the use of the discretionary power."<sup>1</sup>

And where the remaindermen take upon the contingency of surviving the life tenant, or of reaching a certain age, their interests are not taxable at decedent's death, but only at the time the contingency happens,<sup>2</sup> the rule in one case being announced that a contingent remainder is neither appraisable nor taxable until the defeating contingency has been forever rendered impossible of occurrence.<sup>3</sup>

3. Where, however, at the time of decedent's death, the value of the contingent interest or remainder can be ascertained, while such interest is appraisable it is not taxable until the contingency happens.<sup>4</sup>

In the Matter of Cager the court said: "Where the present value of the property, which is devised

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<sup>1</sup> As to discretionary powers, see Matter of Stewart, 30 N. Y. St. Rep. 738; 10 N. Y. Supp. 15; and *post*, sec. 5.

<sup>2</sup> Matter of Wallace, 18 N. Y. St. Rep. 387; Matter of Bruce, Id. 389; Matter of LeFever, 5 Dem. 184; Est. of Matthews, N. Y. Law Jour. July 27, 1889; Est. of Fleming, Id. Oct. 15, 1889; Est. of Benjamin, *supra*.

<sup>3</sup> Matter of LeFever, *supra*; Matter of Benet, N. Y. Law Jour. Mch. 4, 1889.

<sup>4</sup> Matter of Cager, 111 N. Y. 343; Matter of Clark, 1 Con. Surr. Rep. 435; Est. of Matthews, N. Y. Law Jour. July 27, 1889; Matter of Benet, N. Y. Daily Reg. Mch. 4, 1889; Matter of Leavitt, 4 N. Y. Supp. 179; Mellon's App. 114 Pa. St. 573, 574; Nieman's Est. 131 Id. 346; Brewer's Est. 15 P. L. J. N. S. 433, 435; 16 Id. 114.



to one with a limitation over to others upon the happening of some event which may or may not occur, can be ascertained, then a ground upon which an approximate estimate of the value of the ultimate devise appears, and it may be made."

And the act enables a tax to be imposed and collected upon the ulterior devise through the medium of a bond to be given by the respective legatees, payable when they come into possession of the devised property.<sup>1</sup> Whether the failure in such a case to give the conditional bond required by the statute would make the tax due and collectible immediately has not been determined in this State.<sup>2</sup>

• In the Matter of Clark,<sup>3</sup> where the question arose

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<sup>1</sup> L. 1887, sec. 2, Appendix.

<sup>2</sup> See Matter of Peck, 30 N. Y. St. Rep. 209; 24 Abb. N. C. 365; Matter of Clark, 1 Con. Surr. Rep. 431, 435; Matter of Higgins, N. Y. Daily Reg. Dec. 7, 1889. In cases arising under this provision of the statute it does not seem to be the practice in New York to enforce the giving of the conditional bond, but it would appear that under the express language of the statute the tax becomes due and payable immediately if the remainderman fails to exercise an election by filing the bond within one year after the death of the decedent. The point has, however, never been determined. See Com's. App. (Cooper's Est.), 127 Pa. St. 435; Mellon's App. *supra*; Willing's Est. 2 W. N. C. 308; Wharton's Est. 10 Id. 106. These authorities would seem to show that under the Pennsylvania law the tax becomes due immediately in such case, for in Com's. App. (Cooper's Est.), *supra*, the court said: "The payment of the tax by remaindermen, which, before this act, was payable at the death of the decedent, may now, *at their election*, be postponed until they come into actual possession, upon proper security for its payment." See, also, Com's. App. (Fagely's Est.), 128 Pa. St. 610.

<sup>3</sup> 1 Con. Surr. Rep. 431; 5 N. Y. Supp. 199. See, also, Matter of Hopkins, 5 Dem. 1; Matter of Bruce, 18 N. Y. St. Rep. 389; Matter of LeFever, 5 Dem. 185.

as to the liability of contingent annuities to the tax and when the tax thereon was payable, it was held that while the value of such annuities could be and was ascertainable at decedent's death by appraisement, the tax thereupon was not payable until the annuities (which were conditioned to take effect upon the death of the life tenant before the annuitants) actually vested by the death of such life tenant. Ransom, S., in referring to the Matter of Cager,<sup>1</sup> said: "Nothing is said about the assessment or payment of the tax, although the court said that contingent estates might be appraised if their value could be ascertained. The question is, Can the tax be assessed and fixed? The executor cannot diminish the funds which produce the annuities.<sup>2</sup> The contingent annuitants cannot be required to pay for something they may never receive. The act does not say that where property is left to A., an exempt person, for life, with a contingent life-estate to B. that A. shall be taxed to pay for B.'s prospective enjoyment, even though B. may never receive it. The act expressly exempts certain persons, and taxes others, and it cannot be rightfully held that where property was left for life to an exempt person, and after his death for life to one not exempt should she survive, that in that event the *corpus* of the estate which is exempt should be diminished by the amount of the tax upon the happening of an event which would not make the life-tenant liable to the tax whether it did or did not happen, and which, if

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<sup>1</sup> *Supra.*

<sup>2</sup> But see Matter of Johnson, 6 Dem. 146; Matter of Leavitt, 22 N. Y. St. Rep. 81; 4 N. Y. Supp. 179.

the contingency should fail, might throw the estate back to persons who were exempt. Neither the first estate nor the last should be taxed for the contingent second estate. It must be in cases such as this, where it is absolutely impossible to decide to whom the property will go, that the intention is that the appraiser shall report the fair market value of the property at decedent's death, and that the matter must be regarded as suspended until the contingency does or does not happen, at which time, that is, at the death of the life-tenant, it can be determined to whom the property will pass and whether or not it is subject to the tax."<sup>1</sup>

So where decedent left to a collateral heir property to be given him when he arrived at age, and the income of the fund in the meantime, with a proviso that upon his death before reaching twenty-one the whole fund should become part of the residuary estate, held, that while the fund was subject to appraisal as of decedent's death, it was not subject to taxation until the contingency occurred;<sup>2</sup> but where two legatees, husband and wife, were tenants by the entirety under the will in certain real estate, it was held that the wife's interest being known, the property definite, and the event certain, and that as she had an interest capable of assignment and par-

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<sup>1</sup> Matter of Clark, *supra*; see Matter of Bruce, 18 N. Y. St. Rep. 389; Matter of Stewart, 30 Id. 738; Matter of LeFever, 5 Dem. 185.

<sup>2</sup> Est. of Matthews, N. Y. Daily Reg. July 27, 1889; Est. of Benet, Id. Mch. 4, 1889; Est. of Van Rensselaer, Id. May 26, 1889; Est. of Wilkins, Id. Dec. 7, 1889.

tition,<sup>1</sup> her estate was both appraisable and taxable at once.<sup>2</sup>

4. Where, at decedent's death, no appraisement of the estate in remainder can be had for any reason the tax may, nevertheless, be imposed, and payment enforced upon an appraisement had at the time the estate or interest accrues, to wit: when it actually vests in possession or enjoyment.<sup>3</sup>

In the Cager Case, while the court expressly declined to determine the point as to whether an appraisal of the value of the contingent estates could be made when they eventually came to the possession of the devisees, it suggested that the tax might be altogether lost to the State if an appraisal was not allowed immediately, but the remarks in that case have, it seems, been properly treated as *obiter*,<sup>4</sup> and it would appear that the scope and object of the provision of the statute allowing an appraisement as often as and whenever occasion might require,<sup>5</sup> was overlooked. In the Matter of Stewart, *supra*, the question came before Ransom, S., for determination.

<sup>1</sup> L. N. Y. L. 1880, ch. 472.

<sup>2</sup> Matter of Higgins, N. Y. Daily Reg. Dec. 7, 1889, and cases cited, *supra*, p. 163.

<sup>3</sup> Matter of Stewart, 30 N. Y. St. Rep. 738; 10 N. Y. Supp. 15; Matter of Wallace, 18 N. Y. St. Rep. 387; Matter of Bruce, Id. 389; Matter of LeFever, 5 Dem. 184; Est. of Fleming, N. Y. Law Jour. Oct. 15, 1889; Matter of Clark, 1 Con. Surr. Rep. 431, 435; see Mellon's App. 114 Pa. St. 570; Com's. App. (Cooper's Est.), 127 Id. p. 435; Nieman's Est. 131 Id. 346, and cases cited, *supra*, p. 163; *contra*, but *obiter*, Matter of Cager, 111 N. Y. 343; Matter of Hopkins, 6 Dem. i.

<sup>4</sup> See Matter of Stewart, and cases *supra*.

<sup>5</sup> Sec. 13, Appendix; see Com. v. Freedley, 21 Pa. St. 33, and Chapter V, sec. 5.

Decedent there left a portion of her residuary estate to a trustee with power of appointment<sup>1</sup> to and among such of the legatees and in such proportion as he might deem fit. Four years after her death the trustee made an appointment of the property among certain of the collateral legatees who claimed their shares were not subject to taxation, because the act contemplated only the taxation of interests which accrued at the decedent's death, and for the reason that the shares were not determinable until the power of appointment had been exercised. Ransom, S., in holding the shares taxable, said: "It is true that at the date of the death of Mrs. Stewart the appraiser could not determine either the value of the estate which might eventually become taxable or the persons to whom it would pass, and he could not, therefore, make any appraisal. It has been the practice of this court to suspend all proceedings as to such contingent estates until such contingency happen, with a view to the appointment of an appraiser at that time to make the appraisal.<sup>2</sup> The claim that at the death of this decedent there was no estate that could be held subject to the tax, and that, therefore, there can be no tax assessed now cannot be sustained. It is a well settled principle of the law that where parties take under a power of appointment they take under the instrument creating the power, so that the parties named by H. under the power given him must be regarded as the persons selected by Mrs. Stewart. It is true that

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<sup>1</sup> As to powers, see *post*, sec. 6.

<sup>2</sup> Citing *Matter of Wallace*, 18 N. Y. St. Rep. 387; *Matter of Clark*, 1 Con. Surr. Rep. 431.

their interests did not accrue until the date when the power was exercised . . . at which date also the tax upon their interests accrued.”<sup>1</sup>

(d). *Under Pennsylvania statutes.*—The recent statute of this State<sup>2</sup> embodies what seems to be a fair and just enactment regulating the imposition of the tax upon property passing to life-tenants and remaindermen, and in respect to these estates the provisions of the statute are simple but comprehensive. The act applies to all estates made or intended to take effect in possession or enjoyment after the death of a decedent<sup>3</sup> and where the taxable estate is devised to take effect in possession or to come into actual enjoyment after the expiration of one or more life-estates or a period of years the tax shall not be payable, or interest run thereon until the person liable shall come into actual possession of such estate by the termination of the estates for life or years. The tax is assessed at the time the right of possession accrues, provided that the owner shall have the right to pay the tax at any time prior to his coming into possession, and in such cases the tax shall be assessed on the value of the estate at the time of the payment of the tax after deducting the value of the life-estate or estate for years.

The statute requires the owner of any personal

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<sup>1</sup> See, also, *Com. v. Freedley, supra*; *Com. v. Williams*, 13 Pa. St. 29.

<sup>2</sup> Appendix, L. 1887, 79, sec. 1. For Acts 1849, 1850 and 1855, see Chapter V, p. 130, note, criticised in *Kintzing v. Hutchinson*, 34 Leg. Int. 365. For statutes of Md. & Conn. see Appendix.

<sup>3</sup> Sec. 3.

estate liable to the tax to file a bond for its payment and in case of failure so to do makes the tax immediately payable and collectible.<sup>1</sup>

The liability of remaindermen under the statutes of Pennsylvania which have already been, to some extent, necessarily considered in the previous chapter on appraisement, may be stated as follows:<sup>2</sup>

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<sup>1</sup> As to the extent to which this statute repeals or modifies the former law of Penn., it has been held that the act does not make any other or different estates liable and that it is a codification of the prior law and decisions; see *Del Busto's Est.* 23 W. N. C. 111, where all the statutes are carefully collated and explained by Penrose, J., Com's. App. (Cooper's Est.), 127 Pa. St. 435; 17 Atl. 1094; affg. *Cooper v. Com.* 5 P. C. R. 271; Com's. App. (*Bittinger's Est.*), 129 Id. 338. As to constitutionality of act of 1887, see Chapter II, secs. 5, 18, and cases *supra*.

<sup>2</sup> For acts of 1849, 1850 and 1855, see Chapter V, p. 130, and 1 *Purd. Dig.* 215, 216.

The act of April 7, 1826, sec. 1, provided that all estates, real, personal and mixed, of every kind whatever, passing from any person who may die seized or possessed of such estate, being within this commonwealth, either by will or under intestate laws thereof, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain or sale made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor to any person or persons or body politic or corporate in trust or otherwise for the use of father, mother, husband, wife, children and lineal descendants born in lawful wedlock, shall be and they are hereby made subject to a tax or duty of \$2.50 of the clear value of such estate or estates, and at and after the same rate for any less amount to be paid to the use of the commonwealth, and all executors and administrators and their sureties shall only be discharged from their liability for the amount of any and all such duties on estates, the settlement of which they may be charged with by having paid the same over for the use aforesaid as herein directed.

1. Under the early statutes in force prior to 1850 the tax and interest thereon accrued and became payable immediately upon the decease of the person whose estate passing to collateral heirs or strangers was subject thereto, whether the estate passed in actual enjoyment directly or remotely upon the termination of an intervening life estate or term of years, subject, however, to a deduction of the value of the outstanding life or other estate.<sup>1</sup> The same rule prevailed in North Carolina.<sup>2</sup> The words "all estates of every kind whatsoever" were held sufficiently comprehensive to include a remainder.<sup>3</sup>

Under this rule, where the testator devised his land to his sister for life, the proceeds at her death to be divided between brothers and sisters then living, and not to the heirs of such as were dead, it was held that under the act of 1826 the whole estate was taxable immediately after the testator's death, and was then collectible from his executors.<sup>4</sup>

2. But as we have already seen,<sup>5</sup> this condition of the law by which a tax was imposed upon estates in remainder immediately upon the decedent's death, and where the estate might never vest in possession,

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<sup>1</sup> Com. v. Smith, 20 Pa. St. 100, 105; Mellon's App. 114 Id. 564, 570; Com's. App. (Cooper's Est.), 127 Id. 435; Com's. App. (Fagely's Est.), 128 Id. 603; Willing's Est. 33 Leg. Int. 54; 2 W. N. C. 308; Del Busto's Est. 23 W. N. C. 111; James' App. 2 Del. Co. Rep. 164; Cullen's Est. 26 W. N. C. 216.

<sup>2</sup> Atty.-Gen. v. Pierce, 1861, 6 Jones' Eq. 241.

<sup>3</sup> Com. v. Smith, 20 Pa. St. 103; James' App. 2 Del. Co. Rep. 164.

<sup>4</sup> Com. v. Eckert, *supra*.

<sup>5</sup> Chapter V, p. 133.



and its value to the remainderman was often problematical, was felt to be unjust.<sup>1</sup>

3. To remedy this, two statutes were passed, one in 1850 and the other in 1855,<sup>2</sup> by the former of which, in case of a remainder or reversionary interest after an estate for life or years, the person entitled in remainder might elect to await the actual coming into possession of his estate before paying the tax, and in such case he was to give security to the register for its payment.<sup>3</sup>

By act of 1855 it was provided that the penalty for non-payment of the tax should not be charged in any case against the party entitled in remainder or reversion until his interest should come into actual possession and enjoyment, and "that if such legatee or devisee shall elect to pay such tax in anticipation of the same coming into actual possession and enjoyment, the same shall be received at the then valuation of the legacy or devise, deducting the value of the life estate or term of years."

While these statutes empowered the remainderman or his trustee, in their discretion, to postpone payment of the tax upon complying with certain conditions<sup>4</sup> as regards the filing of a bond and an inventory within a year after decedent's death, the right to an appraisal of such estates by the register immediately upon the death of the decedent was not

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<sup>1</sup> See Mellon's App. 114 Pa. St. 570, 571; Com's. App. (Cooper's Est.), 127 Id. 435.

<sup>2</sup> Chapter V, p. 130.

<sup>3</sup> Id.

<sup>4</sup> See Wharton's Est. 10 W. N. C. 105; Willing's Est. *supra*; Com's. App. (Cooper's Est.), *supra*.

taken away<sup>1</sup> until the act of 1887 came into effect, by which it is now plainly provided that the tax shall be assessed at the time the right of possession accrues. In this respect the ruling in Mellon's Appeal<sup>2</sup> seems to have been modified by express legislative sanction, and the construction previously placed upon the act of 1855 by several cases in the lower courts<sup>3</sup> was adopted. Hence not only the payment of the tax upon estates in remainder, but the appraisal thereof, are now postponed until the estate vests in actual possession or enjoyment.<sup>4</sup> Both proceedings are, therefore, made to take place contemporaneously. Two instances at least, however, exist in which the commonwealth would seem to have the right to an immediate payment of the tax: first, where the remainderman desires to anticipate payment or to elect to pay the tax before his estate vests in possession or enjoyment, in which event the statute provides that the tax shall be imposed upon the value of his remainder at the time of payment, deducting the value of the preceding estate;<sup>5</sup> second, where the remainderman omits or neglects, within a year from the testator's death, to file the bond and inventory required by the statute in order to postpone payment of the tax. Such neglect showing a failure on his part to avail himself of the statutory right of election, under

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<sup>1</sup> Mellon's App. 114 Pa. St. 465; James' App. 2 Del. Co. Rep. 164; *contra*, McGeary's Est. 14 P. L. J. N. S. 174; Wharton's Est. *supra*. Chapter V, sec. 4, subd. (c).

<sup>2</sup> *Supra*.

<sup>3</sup> McGeary's Est. *supra*.

<sup>4</sup> See Com's App. (Cooper's Est.), 127 Pa. St. 435.

<sup>5</sup> Com's App. (Cooper's Est.), *supra*. Chapter V, sec. 4, p. 138.

the terms of the law the tax becomes immediately payable and collectible.<sup>1</sup> We have already discussed the method or rule of appraisement under this provision,<sup>2</sup> but no authority seems to exist construing this clause of the statute.

The most recent construction of the law with reference to the liability of estates in remainder and the rights of remaindermen was made by the Supreme Court in *Cooper's Estate*,<sup>3</sup> where, in construing the early statutes in connection with the act of 1887, the court said:

"Thus the payment of the tax by remaindermen, which before this act<sup>4</sup> was payable at the death of decedent, may now, at their election, be postponed until they come into the actual possession, upon proper security for its payment. . . . In estates liable to the collateral tax the commonwealth is entitled to a tax on the entire estate; that when the tenant for life or years—being parent or lineal descendant, etc.—is exempt from liability, the whole tax on the entire estate must be paid by tenant in remainder; that in such cases the time of payment is postponed until the estate comes into actual possession of the tenant liable; that nevertheless, if such tenant elect in anticipation to pay at the death of the decedent, the tax is assessable on the then valuation of the entire estate less the value of the estate for

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<sup>1</sup> Appendix, sec. 3.

<sup>2</sup> Chapter V, sec. 4, p. 136.

<sup>3</sup> Com's. App. 1889, 127 Pa. St. 435, 439. See, also, *Mellon's App.* 1886, 114 Id. 572; *Willing's Est.* 2 W. N. C. 307; *McGeary's Est.* 14 P. L. J. N. S. 174.

<sup>4</sup> P. L. 1850, 170.

life or years; that is, when the tenant of the intermediary estate is not liable the tenant in remainder has the election either to pay the tax on the entire estate, with interest, when he comes into actual possession, or to pay at the death of the decedent on the then valuation of the estate in remainder; and in consideration of such anticipated payment her right to the tax on the intermediate estate is waived by the commonwealth."

It was further held that no substantial change in these respects was made by the act of 1887, and that if under that act tenant in remainder desires to pay the tax at any time prior to his coming into possession, it is to be assessed on the value of the estate at the time of payment of the tax, after deducting the value of the preceding estate, and that the value of the estate of the remainderman depends upon the clear value of the estate that passes from the person who died seized and the probable duration of the preceding life estate.<sup>1</sup> So that, under the recent statute and rulings, the only responsibility which tenant in remainder now assumes upon the death of his testator is, if he would postpone payment, either to give the bond and accompanying inventory for the payment of the tax when the estate vests in possession, or pay the tax immediately in anticipation. The year given to the remainderman in which to do either one of these acts affords him ample time to exercise his judgment with respect to the condition of the estate.

Under the acts existing prior to 1887 it was held that for certain purposes—such as the statute of lim-

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<sup>1</sup> Com's. App. (Cooper's Est.), *supra*.

itations, interest and penalty—the tax accrued upon the devolution of the estate that was subject thereto, to wit: at decedent's death.<sup>1</sup> And this rule was applied both to estates in possession or expectancy.

Under the act of 1887 it would seem, so far as estates in remainder are concerned, the tax only accrues when the remainderman becomes vested with the possession of his estate, and no interest charges now attach until the estate so vests in possession by the termination of the preceding estate.

As has already been shown,<sup>2</sup> it would seem to be to the interest of the remainderman, as a general rule, to anticipate payment of the tax upon his estate before it comes into possession, because as the value of the outstanding life estate is to be deducted the residue, being the interest of the remainderman, is alone taxable. If, however, the remainderman waits until his estate vests in possession he must pay tax upon the full value of the estate coming to him upon the death of the life tenant. Thus a testator leaves an estate which we will assume is worth \$5,000. Supposing the life tenant's interest to be \$2,000, and the remainderman's interest at the testator's death \$3,000. By paying the tax immediately the remainderman pays upon the latter amount, but by waiting until the death of the life tenant the remainderman pays upon the net value of the whole estate coming to him at the time the right of possession accrues, *i. e.*, at the death of the life tenant, and thus upon the full amount of \$5,000, assuming, of course, that the

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<sup>1</sup> Mellon's App. 114 Pa. St. 572. But see Com's. App. (Cooper's Est.), *supra*.

<sup>2</sup> Chapter V, p. 139, note.

value of the interest in remainder has not at that time considerably depreciated.

The tax is imposed not upon the identical property passing to the remainderman, but upon its net value: that is, upon the sum representing the interest of his estate, after deducting all lawful debts and obligations against the estate of the testator.<sup>1</sup>

When the act of 1887 declares that the tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner, or that the tax shall be assessed on the value of the estate at the time of the payment of the tax, it refers to the then *quantum* of the estate after deducting the life estate, and not to the value of the land, which may be a very different estate from that which passed from the decedent.<sup>2</sup> Where payment of the tax is made after the possession accrues the remainder is to be valued as of the date of possession.<sup>3</sup> And this is so whether the remainder arises by formal bequest or by operation of law.<sup>4</sup>

Where decedent devised his estate to his niece for life, with remainder in fee to her son, and the latter died before his mother, leaving as heirs his sisters: held, upon the death of his mother, that as the son never had the actual enjoyment or possession of the estate, it was not taxable as passing from him to his sisters, but that the devise to him from the original

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<sup>1</sup> Com's. App. (Cooper's Est.), 127 Pa. St. 440; Com's. App. (Fagely's Est.), 128 Id. 613; and cases cited Chapter V, sec. 2, p. 120, Chapter IV, sec. 6.

<sup>2</sup> Com's. App. (Cooper's Est.), 435, *supra*.

<sup>3</sup> Com's. App. (Cooper's Est.), *supra*; Mellon's App. *supra*.

<sup>4</sup> McGeary's Est. 14 P. L. J. N. S. 174.

decedent was taxable at the rate imposed by statute at the time of the latter's death, and not at the rate imposed by the law in existence when the mother died.<sup>1</sup>

4. Where the life tenant has power to dispose of the *corpus* of the estate during life, and not simply the use of the income, and there is a bequest to collateral heirs of any surplus that shall or may remain after such life tenant's death, no tax can be imposed upon the residue of the estate until the termination of the life estate, as it is impossible to ascertain the value until that time.<sup>2</sup> The same result has been reached under the New York statute.<sup>3</sup>

Where, however, the will gives the life tenant—a widow—an estate upon the express condition that she pay certain legacies to collateral relatives, the gifts to the legatees are direct and vested, and subject to the tax.<sup>4</sup>

And where<sup>5</sup> the testator bequeathed his residuary estate to his wife, in trust, to be given by her, or as she might direct by will or otherwise, for charitable purposes, with the *proviso* that in case of her death before she should have used the estate for her support, the surplus should be paid by her executors to specific charities, it was held that the wife did not take the whole residuary estate; that the amount ne-

<sup>1</sup> James' App. 2 Del. Co. Rep. 164. See Cullen's Est. 26 W. N. C. 216. For further cases under the Pennsylvania statutes see *supra*, sec. 2.

<sup>2</sup> Nieman's Est. 131 Pa. St. 346. See Mellon's App. *supra*.

<sup>3</sup> Matter of Cager, 111 N. Y. 343. See cases discussed, Chapter V, sec. 4, subd. (d), and *supra*, subd. (c).

<sup>4</sup> Nieman's Est. *supra*.

<sup>5</sup> Brewer's Est. 15 P. L. J. N. S. 433, 435; 16 Id. 114.

cessary for her support was capable of ascertainment, and that a valid trust was created in the residue which, after deducting the amount of such support, was liable to taxation. "There can be no doubt," said the court, "but that if it had been required the whole estate might have been taken by Mrs. B. for her support; but that is a fact which, under the authorities, may be ascertained by competent evidence."<sup>1</sup>

§ 4. *Fraudulent transfers, trusts and gifts inter vivos.*—The legacy and succession tax laws of England and the collateral inheritance tax laws of most of the States are, for obvious reasons, framed so as to include not only property passing by will or intestacy, but generally all property which shall be transferred by deed, grant, sale or gift made or intended to take effect in possession or enjoyment at or after the death of the grantor, transferrer or bargainor, to any person other than those specially exempted. Such is the provision of the statute of New York<sup>2</sup> and similar enactments are contained in the laws of other States. In North Carolina it was also made a misdemeanor to make any fraudulent or intentional disposition of property *inter vivos* for the purpose of evading the tax,<sup>3</sup> a provision which does not seem to be contained in any of the other statutes. While the law of New York upon the subject of gifts and conveyances *inter vivos* has not as yet been the subject

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<sup>1</sup> Citing *Redroth's Will*, 27 Beav. 583; *Ensinan v. Directors of Poor*, 47 Pa. St. 509; *Reck's App.* 78 Id. 432; *Fisk v. Atty.-Gen.* L. R. 4 Eq. 521; *Witman v. Lex*. 17 S. & R. 93.

<sup>2</sup> See Appendix, sec. 1.

<sup>3</sup> Rev. Code 1885, ch. 99, secs. 7, 8.



of judicial interpretation, in Pennsylvania, the meaning and effect of a similar provision have frequently been under consideration. The general rule established by these authorities is that the tax is payable on all property transferred by deed, grant, etc., to collaterals made or intended to take effect in possession or enjoyment at, on or after, the death of the grantor, or transferrer, the policy of the law being not to permit the owner of an estate to evade or defeat the tax by any device which secures to him for life the income, profit or enjoyment of an estate where, after death, the *corpus* of the estate or any part thereof shall enure to the benefit of persons who are not exempted. Hence it would seem that payment of the tax can only be defeated or avoided by such *bona fide* conveyance as parts with the possession, title and enjoyment in the grantor's lifetime. These general principles and others have been enunciated and are sustained by the authorities under this clause of the statute.<sup>1</sup>

So the acts of Congress required that a transfer in order to avoid the tax should be made "upon valuable and adequate consideration,"<sup>2</sup> which phrase was

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<sup>1</sup> Reish v. Com. 42 Leg. Int. 102; *affd.* 106 Penn. St. 521; Seibert's App. 110 Penn. St. 329; Du Bois' App. 121 Id. 368; Davenport's App. 3 Penn. S. C. Dig. 236; Trutt v. Crotzer, 13 Penn. St. 451; Wright's App. 38 Id. 507; Thomson's Est. 5 W. N. C. 19; Waugh's App. 78 Penn. St. 436; Conwell's Est. 45 Leg. Int. 266; Riddle's Est. 45 Id. 394; Com. v. Kuhn, 2 Penn. C. R. 248; U. S. v. Banks, 17 Fed. Rep. 322; U. S. v. Hart, 4 Id. 293. See Brewer's Est. 15 Pitts. L. J. 433; 16 Id. 114; Atty.-Gen. v. Montifiore, 59 L. T. Rep. 534; *Re* Higgins, 45 L. T. Rep. N. S. 199; *Re* Micklewait, 11 Exch. 452.

<sup>2</sup> U. S. v. Banks, *supra*.

construed to mean either money paid or some present legal interest or estate parted with or charged or services rendered to the value of the property received,<sup>1</sup> and under the English law a conveyance or assignment by way of *bona fide* sale did not create a succession upon which the duty could be imposed.<sup>2</sup>

The fact, however, that the transfer or conveyance was actually made by the owner to defeat the tax will not invalidate the transfer but the fund will be liable to taxation in the hands of the *cestui que trust*,<sup>3</sup> and it is not essential under the language of these acts that such gifts or conveyances should be intentional or fraudulent, the language generally being "made or intended." The fact, therefore, that they are made for the purpose of avoiding the tax or that such purpose is accomplished by the transfer would seem to be sufficient in law.<sup>4</sup>

Thus it would seem that the language of these statutes is broad enough to include and is intended effectually to cover even the most intricate transfers of property the object of which is to avoid payment of the tax, or is intended so to do. It is payable, therefore, where the conveyance is such as to clothe the grantee with the mere naked legal title liable to be defeated at any time by the grantor or in the event of the grantee's death before the grantor,<sup>5</sup> and the

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<sup>1</sup> U. S. v. Hart, *supra*.

<sup>2</sup> Fryer v. Morehouse, 3 Ch. Div. 675. As to what constitutes a disposition of property within the English succession act, see Atty.-Gen. v. Montifiore, *supra*; Re Micklewait, *supra*; Re Higgins, *supra*.

<sup>3</sup> Trutt v Cro'zer, 13 Pa. St. 451.

<sup>4</sup> Conwell's Est. 45 I.eg. Int. 266.

<sup>5</sup> Du Bois' App. 121 Pa. St. 368.

rule was applied where the deed was not delivered until after the death of the grantor,<sup>1</sup> and a deed is within the statute which was made by one (who died intestate) to trustees to convey and assign the property after the grantor's death in accordance with his will, or in case of intestacy to those who, had the deed not been made, would have been entitled under the intestate laws to inherit.<sup>2</sup>

So any assignment in trust, reserving to the grantor the income for life and directing the *corpus* to be conveyed to collateral heirs after the grantor's death, is within the statute, as, for instance, a transfer of shares by testatrix in her lifetime to legatees reserving to herself the dividends and income for her support,<sup>3</sup> or an assignment to trustees to pay the assignor the income for life and after his death to pay certain sums to persons named in the deed if they survived him with the right of revocation which was not exercised.<sup>4</sup>

So a deed of trust directing that the devisees shall hold such securities and property in trust for the uses and purposes set forth in a will executed previously whereby the entire estate was bequeathed to collateral relatives and charity will not relieve the estate from liability.<sup>5</sup>

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<sup>1</sup> Davenport's App. 13 Cent. Rep. 67; s. c. 3 Pa. S. C. Dig. 236.

<sup>2</sup> Com. v. Kuhn, 2 P. C. R. 248.

<sup>3</sup> Riddle's Est. 45 Leg. Int. 394; *contra*, Matter of Hendricks, 1 Con. Surr. Rep. 301; 18 N. Y. St. Rep. 987; U. S. v. Lev-  
erich, 9 Fed. Rep. 586.

<sup>4</sup> Wright's App. 38 Pa. St. 507; Thompson's Est. 5 W. N. C. 19.

<sup>5</sup> Seibert's App. 110 Penn. St. 329.

And where two sons, A. and B., took an estate in fee under their father's will and a release was made from A. to B., releasing B. from all claims under his father's will on condition that B. should convey all the lands to A.'s children, they to take possession at A.'s death, and to give him an obligation payable after his death, and A. having consummated the arrangement, died single and without issue, his share was held liable.<sup>1</sup>

And a transfer by A., unmarried and without lineal heirs, of all his property in fee to B., his brother, the latter giving A. a bond conditioned that A. should have the property to enjoy during A.'s life, on A.'s death a few days after, was held within the statute.<sup>2</sup>

Again, where testator had bequeathed his estate to a religious corporation, and long prior to his death had advanced to the beneficiaries on account of their legacy large sums, and took from them their bond conditioned for the payment during his life of an annuity equal to interest at 6 per cent. on the advancement, the moneys so advanced were held to be a contrivance to defeat the tax, and liable.<sup>3</sup>

And a deed of gift to a son, though made as an advancement and as such chargeable against the son's share of the father's estate, is a succession under the Act of Congress<sup>4</sup> as a conveyance made without valuable and adequate consideration.<sup>5</sup>

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<sup>1</sup> Waugh's App. 78 Id. 436.

<sup>2</sup> Reish v. Com. 110 Id. 521; affg. 42 Leg. Int. 102.

<sup>3</sup> Conwell's Est. 45 Leg. Int. 266.

<sup>4</sup> June 30, 1864, sec. 132.

<sup>5</sup> U. S. v. Banks, 17 Fed. Rep. 322; U. S. v. Hart, 4 Id. 293.

But, as we have seen, whenever the absolute title passes from the grantor to the grantee in the lifetime of the former, the tax is not imposed as where the grantor at the request of the grantee through a third person delivers the deed to the latter for the grantee, even though it never comes to the latter's possession until the grantor's death. And it would seem to make no difference that the latter devises the same property by will to the grantee, as he takes under the deed.<sup>1</sup>

And where defendant's mother took a vested interest in a trust fund created by defendant's brother, the enjoyment of which in possession only was postponed until the death of defendant's said brother with a power of disposition by will, and prior to the creation of the trust the mother had made her will in favor of the defendant and her brother, and the latter died before the mother, held that as the trust deed gave a vested remainder to the mother that the defendant took under the latter's will and not from the brother, and that the fund was not liable to the tax.<sup>2</sup>

A promissory note of uncertain value transferred by decedent in his lifetime to another who took the risk of collection in consideration of an annual sum to be paid to decedent as long as he should live, is not within the statute.<sup>3</sup>

And where the property passed to trustees under a trust deed and the net income thereof to the grantor

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<sup>1</sup> *Stinger v. Com.* 26 Penn. St. 422; see *Du Bois' App.* 121 Id. 368.

<sup>2</sup> *Hackett v. Com.* 102 Penn. St. 506.

<sup>3</sup> *Garman's Est.* 3 Penn. C. R. 550. But see *Biddle's Est.* 45 Leg. Int. 394.

for life, the trustees on her death to convert the property into money and distribute the same among collaterals and the deed was irrevocable, held that the *corpus* of the estate having passed at the date of the deed and, in one instance, before the act went into effect, was not within the law.<sup>1</sup>

In England, under the Legacy Act, property passing under trust deed, even with power of revocation, was not liable,<sup>2</sup> and so as to gifts *inter vivos*,<sup>3</sup> and real estate of decedent situate in another State but held in trust for his nieces, is not within the statute.<sup>4</sup>

Where the testatrix by will bequeathed all her property to her executor individually, but agreed with him, at the time of the making of the will, that the bequest should be in trust for her brother, such trust is within the exemption of the statute.<sup>5</sup>

§ 5. *Powers of appointment.*—Property devised to a daughter for life, with power of appointment by will in the life-tenant, which property the daughter by will devised to her brothers and sisters and their children being lineal descendants of her father, is not liable to the tax,<sup>6</sup> but where the power is improperly

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<sup>1</sup> Matter of Hendricks, 18 St. Rep. 987, 989; s. c. 1 Con. Surr. Rep. 301; U. S. v. Leverich, 9 Fed. Rep. 586. But see Riddle's Est. 45 Leg. Int. 394; *In re* Lovelace, 4 DeG. & J. 340.

<sup>2</sup> Thompson v. Brown, 3 Mylne & K. 32.

<sup>3</sup> Brown v. Adv.-Gen. 1 Macq. H. L. Cas. 79.

<sup>4</sup> Estate of Dewey, N. Y. Law Jour. Oct. 21, 1889.

<sup>5</sup> Matter of Farley, 15 N. Y. St. Rep. 727; *contra*, Cullen v. Atty.-Gen. L. R. 1 H. L. 890.

<sup>6</sup> Com. v. Williams, 13 Pa. St. 29; Com. v. Sharpless, 2 Chest. Pa. 246.

exercised and the estate descends as the estate of the donee to collaterals, the tax is payable on the descent from the donee to the appointee, notwithstanding the tax was paid in another State on the descent from the donor to the donee.<sup>1</sup>

In the Matter of Stewart,<sup>2</sup> a trustee was given, under decedent's will, power of appointment among such legatees named in the will as he should select.<sup>3</sup>

He executed the power four years after decedent's death, Among certain of the appointees who were collateral heirs and it was held that although the property passing under the power could not be appraised or taxed at decedent's death it became appraisable and taxable at the time the power was executed. Ransom, S., said: "It is a well settled principle of the law that where parties take under a power of appointment, they take under the instrument creating the power, so that the parties named by H. under the power given him must be regarded as the persons selected by Mrs. Stewart. It is true that their interest did not accrue until the date when the power was executed . . . at which date also the tax upon their interests accrued."<sup>4</sup>

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<sup>1</sup> Com. v. Sharpless, *supra*; see Com. v. Schumacher, 9 L. Bar. Pa. 199; Hackett v. Com. 102 Pa. St. 505.

<sup>2</sup> 30 N. Y. St. Rep. 738; 10 N. Y. Supp. 15.

<sup>3</sup> As to discretion of trustees under powers under the English statutes, see Atty.-Gen. v. Simcox, 1 Exch. 749; Atty. Gen. v. Holford, 1 Price, 426; Atty.-Gen. v. Mangles, 5 M. & W. 120; Adv.-Gen. v. Ramsay, 2 C. M. & R. 224. For cases generally upon the subject of powers under these statutes, see Drake v. Atty.-Gen. 10 C. L. & Fin. 257; Atty.-Gen. v. Brackenbury, 1 H. & C. 782; Platt v. Routh, 6 M. & W. 756; and see 36 Geo. III, ch. 52, sec. 18.

<sup>4</sup> See Chapter V, sec. 4, subd. (a), p. 144.

§ 6. *Legacies for debts and other obligations.*<sup>1</sup>—Decedents at times expressly provide for the payment of their debts by will, bequeathing to the creditor a specific amount in payment of his claim. In numerous instances legacies are also bequeathed “free” or “clear of” the tax, and in such cases the question frequently arises as to whether the decedent’s estate is to pay the tax or the legatee out of the legacy.<sup>2</sup>

While a legacy is defined to be any estate or interest in property, either real, personal or mixed, passing by will,<sup>3</sup> the general rule is that a legacy in payment of a legal debt, or for services rendered the decedent upon request is not a gift, legacy or property within these laws, and hence is not liable to taxation.<sup>4</sup>

So a debt released by will, where the debt was

<sup>1</sup> As to taxation of legacies of \$500, &c. see *Est. of Bird*, N. Y. Law Jour. July 28, 1890, and cases cited, Chapter III, sec. 10; Chapter V, sec. 3, p. 124 *et seq.*; and see *Matter of Sherwell*, N. Y. Law Jour. Aug. 30, 1890, where it was held that under the N. Y. statute exempting estates of \$500, all *taxable* estates are entitled to a deduction of \$500 from the taxable value. The point is novel, but its soundness is doubtful, as the object of the act was to exempt not taxable estates but estates under \$500.

<sup>2</sup> As to liability of executor and legatee *inter se*, see Chapter VII, sec. 3.

<sup>3</sup> *Com. v. Smith*, 5 Pa. St. 142; *King’s Est.* 11 Phila. 27; see legacy defined, 36 Geo. III, ch. 52, sec. 7; 8 & 9 Vict. ch. 76, sec. 4; 16 & 17 Id. ch. 57, sec. 1. The legacy of a slave was held taxable under the early Maryland statute. *State v. Dorsey*, 6 Gill. 388.

<sup>4</sup> *Quinn’s Est.* 8 W. N. C. 312, *Matter of Rogers*, 30 N. Y. St. Rep. 943; 10 N. Y. Supp. 22; *Est. of Reilly*, N. Y. Law Jour. July 17, 1890.



previously outlawed by the statute of limitations, passes nothing and the amount of such debt cannot be assessed for the tax.<sup>1</sup>

In England, however, under the legacy act the rule is different, and the forgiveness of a bond debt by will was held to be a legacy liable to the duty,<sup>2</sup> and in one case where the testatrix generously provided in her will for the payment of all her husband's debts, the creditors were, nevertheless, compelled to pay the duty.<sup>3</sup>

Where, however, the legacy is a pure gratuity for services rendered testator without expectation of reward or compensation, it is taxable,<sup>4</sup> and where a testatrix reciting that A. was indebted to her on bond declared that in case he made no demand against her estate for boarding her she bequeathed him the debt due by him and directed her executors to cancel the bond, the legacy is liable.<sup>5</sup>

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<sup>1</sup> *Stinger v. Com.* 26 Pa. St. 429; see *Williamson v. Naylor*, 3 Y. & C. 208.

<sup>2</sup> *Atty.-Gen. v. Holbrook*, 3 Y. & J. 114.

<sup>3</sup> *Foster v. Ley*, 2 Scott, 438; *Turner v. Martin*, 7 DeG. M. & G. 429.

<sup>4</sup> *Gibbons' Est.* 16 Phila. 218.

<sup>5</sup> *Tyson's App.* 10 Pa. St. 220.

## CHAPTER VII.

### SURROGATES, DISTRICT ATTORNEYS, REGISTERS, EXECUTORS AND OTHER OFFICERS

- § 1. Surrogates, district attorneys, registers and appraisers.
2. Executors, administrators and trustees.
  3. Liability of executors, administrators, trustees, heirs and legatees *inter se*.
  4. Compromises between executors and legatees.

§ 1. *Surrogates, district attorneys, registers, appraisers.*—Under collateral inheritance, legacy and succession tax laws various powers, duties and liabilities in connection with the assessment, collection and payment of the tax are imposed upon surrogate or probate courts, district attorneys, registers, executors, administrators, trustees, appraisers and other persons and officials, which it is proposed to consider in the present chapter. As these duties are principally statutory, some of the provisions of law relating thereto may be consulted in the Appendix.

Questions concerning the appraisement or valuation of estates subject to the tax have been treated separately,<sup>1</sup> and proceedings regarding the remedy and practice to be pursued under these acts have been reserved for the last chapter.<sup>2</sup>

Surrogates' courts in New York are constitutionally empowered to hear and determine all questions

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<sup>1</sup> Chapter V.

<sup>2</sup> Chapter VIII.

relating to the estates of decedents arising under these statutes,<sup>1</sup> and it would appear that exclusive jurisdiction, in the first instance, has been conferred upon the surrogate to appoint the appraiser who is to value the taxable property, and upon his report to assess, fix and determine the liability of property to this tax, and to enforce payment thereof, subject to review by appeal, as in other cases.<sup>2</sup>

The surrogate first acquiring jurisdiction under the act retains such jurisdiction throughout all proceedings, even as to real estate situate in another county, hence the tax should be paid in the county where jurisdiction is first acquired.<sup>3</sup>

Subject to the right of review by appeal, the surrogate is deemed to be the superior authority upon all questions, including that of the value of the estate which is subject to the tax.<sup>4</sup> He is not bound by the appraiser's report, or by the facts which appeared before him, but he may hear such new evidence and statements as may be properly presented.<sup>5</sup>

His decree does not conclude or bind the State or any of its officials or parties interested therein, unless

<sup>1</sup> Matter of McPherson, 104 N. Y. 323, 324.

<sup>2</sup> Appendix, L. N. Y. sec. 15; Matter of McPherson, *supra*. See U. S. v. Trucks, 27 Fed. Rep. 541; Central Trust Co. v. Railroad Co. 15 N. Y. St. Rep. 180; reversed on another point, 110 N. Y. 250; Anderson v. Anderson, 112 Id. 104, 113; see Chapter V, sec. 5.

<sup>3</sup> Matter of Keenan, 1 Con. Surr. Rep. 226; Est. of Keith and Daily, 22 N. Y. St. Rep. 337.

<sup>4</sup> Matter of Astor, 6 Dem. 402; Matter of Frowe, 20 N. Y. St. Rep. 355; s. c. Frazer v. Peo. 6 Dem. 174. See Stinger v. Com. 26 Pa. St. 424; Strode v. Com. 52 Id. 186.

<sup>5</sup> Matter of McPherson, *supra*, 323; Est. of McGowan, N. Y. Law Jour. July 30, 1890, and *supra*, p. 151.

they were duly notified and had an opportunity to be heard.<sup>1</sup> It is conclusive, however, upon the rights of an adopted son, who had legal notice of the appraisement, and the decree is unaffected by a subsequent change or amendment of the law.<sup>2</sup>

No proceeding will be made by the surrogate of his own motion to enforce payment of the tax until the expiration of eighteen months from the decedent's death.<sup>3</sup>

He has power to enforce his decrees under these statutes by such proceedings and methods as are provided for the enforcement of the usual decrees of his court.<sup>4</sup>

Against persons interested in the property liable to the tax other than executors, administrators and trustees, the surrogate has the power, on return of an execution issued on his decrees, to enforce it by proceedings for contempt;<sup>5</sup> but execution should first issue.

As to executors, administrators and trustees, application for an order directing them to pay the tax may be made to the surrogate without leave.<sup>6</sup>

<sup>1</sup> Chapter VIII, sec. 1. See *post*, p. 208; *Matter of McPherson*, *supra*; *Matter of Vanderbilt*, 10 N. Y. Supp. 239.

<sup>2</sup> *Matter of Miller*, 6 Dem. 119; *affd.* 47 Hun. 394; 110 N. Y. 216; *Matter of Astor*, 6 Dem. 408; *Matter of Kemeys*, 56 Hun. 117. As to adopted children, see Chapter III, sec. 6; Chapter VIII, sec. 4.

<sup>3</sup> *Matter of Astor*, *supra*.

<sup>4</sup> *Matter of McPherson*, 104 N. Y. 323.

<sup>5</sup> *Matter of Prout*, 19 N. Y. St. Rep. 318; s. c. 3 N. Y. Supp. 831; *Estate of Gilman*, 6 Dem. 358; Code Civ. Proc. sec. 2555; *Matter of Vanderbilt*, 10 N. Y. Supp. 239.

<sup>6</sup> *Matter of Prout*, *supra*.

So it would appear that the surrogate has power to order a reference in these proceedings upon any disputed questions of fact, or to determine them himself, affording the parties the right of examination and cross-examination, or the submission of such proof as he may deem proper.<sup>1</sup> But it is doubtful whether the surrogate has any jurisdiction to compel a legatee to repay an executor for taxes paid by the latter for the legatee's benefit.<sup>2</sup>

It is held that he has no jurisdiction to determine the liability of an executor to pay the tax on motion of the executor, but only by proceedings instituted by the district attorney, as provided by the statute.<sup>3</sup>

Upon this subject the law of New York<sup>4</sup> provides in effect that whenever the comptroller or county treasurer of any county shall have reason to believe that any tax is due and unpaid after the "refusal or neglect" of the persons interested<sup>5</sup> in the property liable to said tax to pay the same, he shall notify the district attorney of the proper county, in writing, of such failure, and the latter, if he have probable cause to believe a tax is due and unpaid, shall prosecute

<sup>1</sup> See *Matter of Pearsall*, 21 N. Y. St. Rep. 305; *Code Civil Proc.* sec. 2546; *Matter of McPherson*, 104 N. Y. 323; *Matter of Astor*, 6 Dem. 416. See this case for rules established by the surrogate of N. Y. county under this act.

<sup>2</sup> See *Matter of Underhill*, 117 N. Y. 471; *Matter of Keech*, N. Y. Law Jour. May 7, 1889; *affd.* 32 N. Y. St. Rep. 227.

<sup>3</sup> *Matter of Farley*, 15 N. Y. St. Rep. 729; *Matter of Arnett*, 49 Hun, 599; *Matter of Jones*, 5 Dem. 30; *Matter of Vanderbilt*, *supra*.

<sup>4</sup> Appendix, secs. 16, 17.

<sup>5</sup> As to meaning of the term "persons interested," see *Matter of Arnett*, *supra*; *Matter of Wagner*, 119 N. Y. 32.

the proceedings in the surrogate's court for the enforcement and collection of such tax.

The provision requiring the comptroller to have "reason to believe" that a tax is due, and the district attorney "to have probable cause" to believe a tax is due, are evidently synonymous in meaning, and they would seem to disclose an intention on the part of the legislature to vest each of those officials with discretionary power to determine preliminarily, to their own satisfaction, upon the facts of each case, whether in their judgment there is good ground for believing a tax to be due and unpaid, so as to warrant the commencement of a proceeding to collect. Hence it would seem that their mere reasons for believing a tax to be due and unpaid cannot be controverted by the party against whom the proceeding is brought.<sup>1</sup>

From the fact that the act requires the proceeding to be prosecuted by the district-attorney it would seem proper to institute it in his name.

The established practice in New York county, and, perhaps, elsewhere in the State, is for the last named officer to petition the court upon his own verified petition,<sup>2</sup> setting forth the necessary facts,<sup>3</sup> and citing, upon due notice, all persons interested in the property liable to the tax, to wit, the executor, administrator or trustee, and the legatees or devisees entitled to the taxable interest. These persons, and all others interested in the estate, are entitled to notice, in order that they may have an opportuni-

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<sup>1</sup> See *Matter of Vanderbilt*, 10 N. Y. Supp. 239.

<sup>2</sup> See Forms, Appendix.

<sup>3</sup> *Matter of Vanderbilt*, *supra*; see *Matter of Arnett*, 49 Hun, 603.

ty to be heard upon the proceeding. The proceeding as to persons not notified or heard, becomes absolutely void.<sup>1</sup>

But the district-attorney has no power to institute any proceedings to collect the tax unless and until notified by the comptroller or county treasurer of such refusal or neglect<sup>2</sup> of the persons liable to pay the tax.<sup>3</sup>

The district-attorney, though not formally cited, is, however, a proper party upon a final accounting of an executor as being interested in the estate,<sup>4</sup> upon behalf of the State for the purpose of collecting the tax, and even though the State has not been cited,<sup>5</sup> though upon such a proceeding it seems he will not be entitled to the payment of the tax until the tax has been fixed after citation to all persons interested as required by the act.<sup>6</sup>

Under the act of 1887, in order to afford the rep-

<sup>1</sup> Chapter VIII, sec. 1; *Matter of McPherson*, 104 N. Y. 322, 323; *Matter of Miller*, 110 Id. 216, 224; *Matter of Vanderbilt*, 10 N. Y. Supp. 239.

<sup>2</sup> See *Frazer v. Peo.* 6 Dem. 174. Under the acts of Congress a refusal or neglect only arises after demand made. *U. S. v. Penn. Co.* 27 Fed. Rep. 539.

<sup>3</sup> In *Matter of Jones*, 5 Dem. 30, it was suggested that the only way by which the surrogate can compel the executor or administrator to pay the tax, is to refuse to allow him credit upon his accounting, &c. But it is apparent that the district-attorney is given ample power under the act; see Appendix, sec. 17; *Matter of Arnett*, *supra*; *Matter of Vanderbilt*, *supra*.

<sup>4</sup> Words "person interested in the estate" defined; *Matter of Wagner*, 119 N. Y. 32.

<sup>5</sup> *Matter of Arnett*, *supra*; citing Code of Civ. Proc. sec. 2731.

<sup>6</sup> L. N. Y. Appendix, secs. 13-16.

representatives of the estate a reasonable time in which to settle its affairs, no proceedings can now be commenced upon behalf of the State to compel payment of the tax until after the expiration of eighteen months from decedent's death.<sup>1</sup>

Where a tax is unpaid, and a proceeding is instituted by the district attorney under the statute to collect the same, the executor or trustee becomes personally liable for the costs,<sup>2</sup> the amount of which is regulated by the Code.<sup>3</sup>

The tax should be paid to the treasurer of the county where jurisdiction is first acquired.<sup>4</sup>

In New York the county treasurer must pay the appraiser's fees out of any moneys in his hands received on account of taxes, even though he may have received nothing as yet from the estate appraised by the appraiser, and mandamus will lie to compel him to pay the fees due.<sup>5</sup>

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<sup>1</sup> *Frazer v. Peo.* 6 Dem. 179; s. c. *Matter of Frowe*, 20 N. Y. St. Rep. 355; *Matter of Astor*, 6 Dem. 402, 412.

<sup>2</sup> *Estate of Minturn*, N. Y. Law Jour. July 18, 1890.

<sup>3</sup> Civ. Proc. sec. 2561; *Matter of Stucke*, N. Y. Daily Reg. April 25, 1889; *Matter of Pond*, Id. June 13, 1889. But see *Matter of Enston*, 5 Dem. 95. Under sec. 2561, the district attorney is entitled to \$70 where there is a contest, and \$25 where there is no contest. *Matter of Stucke*, *supra*.

As to what is not a "refusal or neglect" to pay taxes so as to bar the district attorney from costs under sec. 17 of the statute, and when he is entitled to costs under sec. 19, see *Frazer v. Peo. supra*.

<sup>4</sup> *Matter of Keenan*, 1 Con. Surr. Rep. 226; *Est. of Keith & Daily*, 22 N. Y. St. Rep. 337; *quare*, as to the right of the comptroller or county treasurer to sue the executor at law for these taxes, see *Matter of Jones*, 5 Dem. 36; *Montague v. State*, 54 Md. 483; *Torrey v. Willard*, 28 N. Y. St. Rep. 641.

<sup>5</sup> *Matter of William Murray*, per Bartlett, J., Kings Co. N. Y.



In Pennsylvania<sup>1</sup> the proceedings to collect where the tax is not paid within one year after decedent's death to the register of wills are begun in the Orphan's Court,<sup>2</sup> by bill or petition filed by the register, and the court is authorized upon his application to cite the executor or administrator to file an account, or to cite them and the heirs to show cause why the tax should not be paid, and the register may thus compel payment from the executor or administrator who has neglected to pay the tax.<sup>3</sup>

§ 2. *Executors, administrators and trustees.*—In New York, Pennsylvania, and many other States, the statutes substantially provide that all executors, administrators and trustees shall be liable for any and all legacy and succession taxes until the same shall have been paid as directed by law.<sup>4</sup>

Generally, in all cases where such taxes are not paid within a year after decedent's death, such exec-

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Supreme Ct., opinion not reported. As to commissions of county treasurer and effect of his receipt for taxes, see *Matter of Keenan, supra*.

<sup>1</sup> See Scott on Intestate Law Pa. 1871.

<sup>2</sup> Appendix, L. 1887, secs. 14, 15.

<sup>3</sup> Cullen's Est. 26 W. N. C. 216. As to duties of register and liability of his sureties, see *Com. v. Toms*, 45 Penn. St. 408; Scott on Intestate Law, *supra*, 315; effect of register's receipt in full for taxes, see *Brewer's Est.* 15 Pitts. Law J. 435; 16 Id. 114; as regards interest, *Com's. App. (Fagely's Est.)*, 128 Pa. St. 613. As to fees of county treasurers and their successors, see *Stephen v. Com.* 4 Watts, 123.

<sup>4</sup> Appendix, L. N. Y. sec. 1; Id. Penn. sec. 1; Id. Conn. secs. 1, 16; Id. Md. sec. 102; see *Matter of Vanderbilt*, 10 N. Y. Supp. 239; *Estate of Minturn*, N. Y. Law Jour. July 18, 1890; *Boyd's Est.* 4 W. N. C. 510; Cullen's Est. 26 Id. 216.

utors, administrators and trustees must give a bond conditioned to pay the same with interest,<sup>1</sup> and by further provision the executor or administrator is required to deduct the tax from any legacy or property subject to the ~~tax~~<sup>Tax</sup> before paying the same over to the legatee,<sup>2</sup> and he cannot deliver or be compelled to deliver any specific legacy or property subject to the tax to any person until he shall have collected the tax thereon.<sup>3</sup>

Such executors have full power to collect the tax from the legatee, and to sell so much of the property of the decedent as will enable them to pay the tax.<sup>4</sup> And they are permitted to receive a fair or reasonable compensation under the will in lieu of commissions, which compensation is exempt from taxation.<sup>5</sup>

Under this provision of the statute the court will not generally determine what is a fair and reasonable compensation until the services have been rendered by the executor or trustee, and for this purpose the question will be suspended until an accounting is had.<sup>6</sup>

They are further authorized under the New York

<sup>1</sup> Appendix, L. N. Y. sec. 4; L. Md. sec. 117.

<sup>2</sup> Appendix, L. Md. secs. 103, 104, 114; L. Conn. sec. 5; L. N. Y. sec. 6; L. Penn. sec. 5.

<sup>3</sup> Cases *supra*; Matter of Howe, 112 N. Y. 103; affg. 48 Hun, 235; See Com. v. Smith, 5 Pa. St. 144; King's Est. 11 Phila. 26; Com. v. Coleman, 52 Pa. St. 473.

<sup>4</sup> Appendix, L. N. Y. sec. 7; Id. Pa. sec. 5; L. Md. secs. 104, 114; L. Conn. sec. 8.

<sup>5</sup> Appendix, L. N. Y. sec. 3; L. Penn. sec. 2; L. Conn. sec. 3.

<sup>6</sup> Estate of Havens, N. Y. Law Jour. Aug. 1, 1890.

statute<sup>1</sup> to procure the appointment of an appraiser,<sup>2</sup> for the purpose of having the tax fixed by the surrogate upon the value appearing in the appraiser's report. It is primarily the duty of the executor to apply for an appraisement, and the power given to the surrogate of his own motion to cause an appraisement to be made and to fix the tax was not intended to relieve personal representatives of this obligation.<sup>3</sup> The subject of the appraisement has already been considered,<sup>4</sup> but such executors, administrators, and all other persons interested in the estate, are entitled to notice of the time and place of making the appraisement, and of all other proceedings under these acts.<sup>5</sup>

That it is the duty of every personal representative, where the tax is due, before paying over any legacy or share, to exact from the person who is to receive it a sum sufficient to pay the tax,<sup>6</sup> or to de-

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<sup>1</sup> Appendix, sec. 13.

<sup>2</sup> None is necessary where the legacies are in cash, the surrogate assessing and fixing the tax upon the cash value. *Matter of Astor*, 6 Dem. 402; *Matter of Jones*, 5 Id. 30; *Est. of Bird*, N. Y. Law Jour. July 28, 1890; *contra*, *Matter of Peck*, 30 N. Y. St. Rep. 209. And see Chapter III, sec. 10; Chapter V, sec. 1.

<sup>3</sup> *Frazer v. Peo.* 6 Dem. 174. But see *Matter of Farley*, 15 N. Y. St. Rep. 727.

<sup>4</sup> Chapter V.

<sup>5</sup> *Coxe's App.* 1 Purd. Dig. 10th ed. 218; *Matter of McPherson*, 104 N. Y. 322, 323; *Matter of Vanderbilt*, 10 N. Y. Supp. 239; *Matter of Lenox*, 9 Id. 895.

<sup>6</sup> *Supra*, p. 200; *Sohier v. Eldridge*, 103 Mass. 349; *Hathaway v. Fish*, 13 Allen, 267; *Montague v. State*, 54 Md. 483; *Hunter v. Husted*, *Busby's Eq.* N. C. 141; *Atty.-Gen. v. Allen*, 6 Jones' Eq. (N. C.), 141; *Com. v. Coleman*, 52 Pa. St. 473; *Matter of Howe*, 112 N. Y. 103; *affg.* 48 Hun, 235.

duct the tax therefrom, unless the will directs the same to be paid from the general estate, has frequently been determined under these statutes.<sup>1</sup>

But statutes making it the duty of executors to pay mean domestic executors and administrators, as it is not to be presumed that the legislature intended to control or impose liabilities upon foreign personal representatives or foreign decedents, as they are not subject to its jurisdiction. Such statutes, it has been held, cannot be enforced.<sup>2</sup> But, as we have already seen,<sup>3</sup> the decisions upon this point were based upon the ground that there was no intention on the part of the legislature to tax non-resident decedents. But where such intention exists the State has undoubted power to tax the property of foreign decedents within its jurisdiction, and to enforce payment of the tax from persons seeking to obtain such property.<sup>4</sup>

So it would seem that domestic executors are not responsible for the tax upon real property situate in another State at the death of the testator, although the proceeds are subsequently brought within the taxing State, as the succession takes place to such property under the law of the place where it is situate.<sup>5</sup>

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<sup>1</sup> *Id.* and *Shippen v. Burd*, 42 Pa. St. 461, 464; *Holbrook's Est.* 3 P. C. R. 265; 44 Leg. Int. 186; *Murphy's Est.* 4 P. C. R. 336; *Com. v. Smith*, 5 Pa. St. 145; *Wright's App.* 38 Id. 512; *Thomson's Est.* 5 W. N. C. 19; *Theobald on Wills*, 1st ed. 57.

<sup>2</sup> *Kintzing v. Hutchinson*, 34 Leg. Int. 365; *Matter of Enston*, 113 N. Y. 180, by a divided court; *Matter of Tulane*, 51 Hun, 213.

<sup>3</sup> Chapter IV, p. 95.

<sup>4</sup> Chapter IV, sec. 18, *et seq.*

<sup>5</sup> *State v. Brevard*, Phil. Eq. N. C. Rep. 141; *Alvaney v.*

Hence the State has no power to enforce a tax in the nature of a direct tax, and compel the executor to pay it upon such foreign real estate.<sup>1</sup>

But<sup>2</sup> where the will of a resident directs that his foreign real estate be converted into personalty, it is so considered, and the executor will be liable for the tax thereon.

By the Pennsylvania statute foreign executors and administrators are to pay the tax on stocks transferred within the State, and if they default the corporation permitting the transfer of such stock is liable.<sup>3</sup> A similar provision in the New York statute was held to be unenforceable under the law<sup>4</sup> passed in 1885, but under the amended statute<sup>5</sup> taxing non-resident decedents' estates this provision would appear to be enforceable against the representatives of such decedents seeking to transfer property which was within the State at the time of death.<sup>6</sup>

There are further exceptions to the rule requiring the executor or administrator to deduct the tax, as where real estate passes directly to the devisees, and in intestacy to the heirs. It is then no part of the

Powell, 2 Jones' Eq. 51; Drayton's App. 61 Pa. St. 172; Com. v. Coleman, 52 Id. 468; Hood's Est. 9 Harris, 106.

<sup>1</sup> Com's. App. (Bittinger's Est.), 129 Pa. St. 338. See Est. of Dewey, N. Y. Law Jour. Oct. 21, 1889.

<sup>2</sup> See Chapter IV, p. 81.

<sup>3</sup> Scott on Intestate Law Pa. 1871, 547; citing Cook's Est. 9 Leg. Int. 50; *contra*, Kintzing v. Hutchinson, 34 Leg. Int. 365. See *In re Cigala*, L. R. 7 Ch. Div. 351, and *supra*, p. 113.

<sup>4</sup> Matter of Enston, *supra*.

<sup>5</sup> Appendix.

<sup>6</sup> See Chapter IV, p. 102, and cases cited.

executor's or administrator's duty to pay the tax. Those who take the lands are liable therefor.<sup>1</sup>

So it would seem that an administrator has no right to pay the tax upon real estate out of the personalty, as his rights and liabilities are limited to the latter property.<sup>2</sup>

In Pennsylvania, if it is an intestate estate, and administration is granted there, to enable the administrator to collect the assets, he pays the tax out of the aggregate of the estate before distribution. If a will be proved and administered the executor deducts the collateral tax from the devised property, unless the will otherwise directs.<sup>3</sup>

And an executor is not liable as such for a collateral tax due the State upon a devise of land to himself, though he be liable as an individual; but his co-executors are so liable.<sup>4</sup>

But few adjudications have thus far been made in this country, determining the extent of the personal liability of executors, administrators or trustees for the payment of the tax under the statutory provisions heretofore enumerated. Under the English statutes the executor or other representative is held primarily liable to pay the duty,<sup>5</sup> and where such executor fails to deduct the duty, or the legatee fails to pay the

<sup>1</sup> Boyd's Est. 4 W. N. C. 510; Forbes' Est. 16 Phila. 356; Com. v. Coleman, 52 Pa. St. 468.

<sup>2</sup> Com. v. Coleman, *supra*.

<sup>3</sup> Com. v. Coleman, *supra*; Com. v. Smith, 5 Pa. St. 144; King's Est. 11 Phila. 26. As to duties of administrator in Pennsylvania under these statutes, see Scott on Intestate Law Penn. 1871, p. 535.

<sup>4</sup> St. v. Brevard, Phil. Eq. Rep. 141. See Matter of Farley, 15 N. Y. St. Rep. 727.

<sup>5</sup> Bate v. Payne, 13 Q. B. 900.

amount thereof, both he and the legatee accepting the legacy or share,<sup>1</sup> become personally liable for the tax.<sup>2</sup>

Where the executor is compelled to pay the duty he has an appropriate remedy over against the legatee, the questions relating to which subject are considered in the chapter relating to the remedy and practice under these acts.<sup>3</sup>

It is doubtful whether, under the acts of Congress, the executor was liable in *personam* for the legacy duty.<sup>4</sup>

There was no personal liability upon the legatee unless it appeared that he had custody or possession of the property itself, or of the legacy and refused to pay the tax after a demand made as required by the statute.<sup>5</sup>

On failure of the executor or administrator to pay the tax suit was maintainable against the individual in possession to enforce the statutory lien.<sup>6</sup> So under the succession duty act of Congress,<sup>7</sup> the person beneficially interested in the property was the one liable to pay the tax and not the trustee or exec-

<sup>1</sup> Atty.-Gen. v. Munby, 3 H. & N. 826; Foster v. Ley, 2 Bing. N. C. 276; Matter of McPherson, 104 N. Y. 323.

<sup>2</sup> *In re* Sammon, 3 M. & W. 381; Bate v. Payne, *supra*; *In re* Wilkinson. 1 C. M. & R. 142; Hales v. Freeman, 1 Br. & B. 391; 15 and 16 Vict. ch. 51, sec. 44; 36 Geo. III, ch. 52, sec. 6; 13, 14 Vict. ch. 97, sec. 8.

<sup>3</sup> See cases *supra*, and *post*. sec. 3, and Chapter VIII, sec. 1.

<sup>4</sup> U. S. v. Allen, 9 Ben. 154; U. S. v. Trucks, 27 Fed. Rep. 541.

<sup>5</sup> U. S. v. Trucks, *supra*; U. S. v. Penn. Co. 27 Fed. Rep. 539; 12 U. S. Stat. 485, sec. 112.

<sup>6</sup> U. S. v. Trucks, *supra*.

<sup>7</sup> 13 Stat. at Large. 285; Act June 30, 1864, secs. 126, 127.

utor in whom the legal title vested or to whom a power in trust was given for the benefit of such person.<sup>1</sup>

In Pennsylvania executors and administrators are treated as agents of the State, and as such their duty is to retain the tax and pay it over to the proper officers.<sup>2</sup>

The law of that State<sup>3</sup> expressly declares that the tax on real estate shall remain a lien thereon until paid and that<sup>4</sup> the owners of all estates and all executors, administrators and their sureties shall only be discharged from liability for the amount of such taxes the settlement of which they may be charged with by *having paid* the same over as directed by law. This liability is perpetual and the limitations in the act only apply to purchasers of the real estate.<sup>5</sup>

Where the tax is not paid within the time limited by law the penalty is properly chargeable to the administrator or executor.<sup>6</sup>

In New York it has recently been determined that a personal liability for the tax is imposed upon executors and administrators which continues until the tax has been paid. Such liability becomes fixed where the representatives pay over

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<sup>1</sup> U. S. v. Tappen, 10 Ben. 284; see Sohier v. Eldridge, 103 Mass. 349; Hathaway v. Fish, 13 Allen, 267.

<sup>2</sup> Seibert's App. 18 W. N. C. 278.

<sup>3</sup> Appendix, L. Penn. sec. 3.

<sup>4</sup> Sec. 1.

<sup>5</sup> Cullen's Est. 26 W. N. C. 216; James' App. 2 Del. Co. Rep. 164.

<sup>6</sup> Palmer's Est. 2 Del. Co. Rep. 180; see Est. of Minturn, N. Y. Law Jour. July 18, 1890.



legacies which are taxable without first deducting the tax therefrom. They are also personally liable for the costs of the proceeding.<sup>1</sup>

In considering the question in the latter State, Ransom, S., said: "The liability of executors for the tax seems to be certain. Section 1 of the act provides that they shall be liable for any and all such taxes until the same shall have been paid. Section 6 requires an executor having in charge or trust any legacy or property for distribution subject to said tax, to deduct the tax therefrom if it be money; and further provides that he shall not be compelled to deliver any specific legacy or property subject to tax until he has collected the tax thereon. Section 8 requires the payment to the comptroller<sup>2</sup> within 30 days of any such sum retained for the tax, and further provides that the executor shall not be entitled to credit in his accounts, *nor discharged from liability* for such tax until he shall produce a receipt sealed and countersigned by the comptroller."<sup>3</sup> But it was held in that case that certain appraisement proceedings begun by the executors to have the tax assessed and fixed under the statute to which neither the State nor some of the principal legatees were parties was, nevertheless, under the circumstances of that case, binding upon the State so far as the executors were concerned and relieved them from personal liability. In view of the express language of the statute, quoted from the opinion, it is doubtful whether this

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<sup>1</sup> Matter of Vanderbilt, 10 N. Y. Supp. 239; Estate of Min-turn, N. Y. Law Jour. July 18, 1890.

<sup>2</sup> Or county treasurer.

<sup>3</sup> Matter of Vanderbilt, *supra*.

result is sound or can be maintained for the reason that neither the State nor some of the legatees had any notice or were parties to the proceeding, hence they were not bound by the report of the appraiser or by the decree of the surrogate thereon. It would seem that nothing relieves from a tax excepting payment or a decree that is binding upon the State.<sup>1</sup> It has been held that the question of the executor's liability cannot be determined upon his own motion and that the only method under the statute by which such liability can be determined is by proceedings instituted by the district-attorney on behalf of the State to compel payment of the tax.<sup>2</sup>

But a receipt "in full" for the tax given by the register by mutual mistake justifies the executor in paying the legacies without deduction, and he cannot suffer injury therefor where he has acted in good faith.<sup>3</sup>

But where the receipt is simply for the amount of money fixed by the court and does not express the idea that the money was received in satisfaction, discharge or payment of the decree or of the amount of the tax claimed by the State, it will not act as an estoppel, so as to prevent the State from recovering interest legally due,<sup>4</sup> and a receipt is no protection to the executor, or other representative, as against the

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<sup>1</sup> Matter of McPherson, 104 N. Y. 323; Matter of Lenox, 9 N. Y. Supp. 895; Succession of Dupey, 33 A. La. 261; Com's. App. (Fagely's Est.), 129 Pa. St. 613; affg. 24 W. N. C. 473.

<sup>2</sup> Matter of Farley, 15 N. Y. St. Rep. 727; Matter of Arnett, 49 Hun, 599.

<sup>3</sup> Brewer's Est. 15 Pitts. L. J. N. S. 345; 16 Id. 114; Com. v. Freedley, 21 Pa. St. 33.

<sup>4</sup> Com's. App. (Fagely's Est.), *supra*.

State for taxes due, where they were by reason of mistake or fraud omitted to be paid.<sup>1</sup>

The liability, under these statutes, of the personal representatives, and of the legatee where he accepts the legacy or share,<sup>2</sup> is perpetual, and the provisions of the statute limiting the lien of the tax to a certain period only applies to purchasers of the realty, and not to such representatives or legatees.<sup>3</sup>

§ 3. *Liability of executors, administrators, trustees, heirs and legatees inter se.*<sup>4</sup>—Except where some personal or fixed liability is incurred by the executor, administrator or trustee, pursuant to statute, in refusing or neglecting to pay the tax when due and payable,<sup>5</sup> it is payable primarily out of the taxable interest by the persons taking the property, or who are beneficially interested therein, and not out of the general estate.<sup>6</sup>

But in construing wills questions often arise, un-

<sup>1</sup> Matter of Astor, 6 Dem. 402; Brewer's Est. *supra*; Com's. App. (Bittinger's Est.), 129 Pa. St. 338; Matter of Vanderbilt, *supra*; Matter of Keenan, 1 Con. Surr. Rep. 226.

<sup>2</sup> Montague v. State, 54 Md. 483; Matter of McPherson, 104 N. Y. 323; Matter of Vanderbilt, 10 N. Y. Supp. 239; U. S. v. Trucks, 27 Fed. Rep. 541; U. S. v. Tappen, 10 Ben. 284; Sohler v. Eldridge, 103 Mass. 349; Hathaway v. Fish, 13 Allen, 267. See Torrey v. Willard, 28 N. Y. St. Rep. 641; Seibert's App. 18 W. N. C. 278.

<sup>3</sup> Mellon's App. 114 Pa. St. 572; Cullen's Est. 26 W. N. C. 216; James' App. 2 Del. Co. Rep. 164.

<sup>4</sup> As to when legacies in payment of debts are not liable to tax, see Chapter VI, sec. 6.

<sup>5</sup> See sec. 2, *supra*.

<sup>6</sup> Chapter III, sec. 10.

der these statutes, between executors, trustees and legatees *inter se*, as to whether decedent intended that the legacy or devise should be "free" or "clear" of the tax—in other words, whether the tax should be borne by the testator's general estate, and thus paid by the executor or trustee without deduction from the legacy, or solely out of the legatee's interest.<sup>1</sup>

There is no doubt that a testator possesses the general power to relieve the legatees from the payment of the tax by throwing it on the residue of the estate where it is sufficient to make payment, but an intention that a devise shall be "free" of the tax as between the estate and the devisee must clearly appear. A mere declaration that it is to be clear of all charges and incumbrances, or other legal demands, is not sufficient.<sup>2</sup>

Where the legacy or annuity is expressly relieved, however, by the terms of the will from the tax, the estate or executor will be liable therefor.<sup>3</sup>

As where the legacy is of a clear or annual net sum, to be paid the annuitant out of the fund set

<sup>1</sup> Hunter v. Husted, Busby's Eq. 141; Atty.-Gen. v. Allen, 6 Jones' Eq. 144; Shippen v. Burd, 42 Pa. St. 461; Thomson's Est. 5 W. N. C. 19; Horter's Est. 1 Pears. 424; Murphy's Est. 4 P. C. R. 336; Holbrook's Est. 3 Id. 265; Com. v. Smith, 5 Pa. St. 145; Wright's App. ¶58 Id. 512; Sohler v. Eldridge, *supra*; Hathaway v. Fish, *supra*; *In re* Wilkinson, 1 C. M. & R. 160; Matter of Howe, 112 N. Y. 103; Matter of Sherwell, N. Y. Law Jour. Aug. 30, 1890; Matter of Cager, 111 N. Y. 343, where the court say that the tax is upon the individual. See Com. v. Kirchner, 24 W. N. C. 200, and cases cited *supra*, p. 74, note.

<sup>2</sup> Forbes' Est. 16 Phila. 356; Horter's Est. *supra*.

<sup>3</sup> King's Est. 11 Phila. 30.

apart, this direction is sufficient to make the estate liable, and relieves the annuity.<sup>1</sup>

In England, where the will clearly releases the legacy from the duty, it must be paid by the executors.<sup>2</sup>

Where, however, the will provided that the devisees should pay "all taxes, ground rents and other necessary and legal charges upon the real estate devised to them," and that "not wishing such gifts, devises, etc., to be interfered with or lessened," all legitimate charges were to be paid by his executors, it was held that the devisees, and not the estate, were liable.<sup>3</sup>

And where the will bequeathed a fund to trustees to receive the collected income and produce thereof, and after deducting all proper costs, to pay the residue of such income to the beneficiary—held that the duties were a charge upon the latter's income.<sup>4</sup>

But where a married woman had a general power of appointment, and by will appointed the fund and nominated executors of her will, they and not the trustees of the instrument by which the power is created were held to be the proper persons to administer the trust fund, and the executors were accordingly held liable for the legacy duty.<sup>5</sup>

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<sup>1</sup> Bispham's Est. 46 Leg. Int. 98.

<sup>2</sup> Barksdaile v. Gilliat, 1 Swans. 562; Baiely v. Boulton, 21 L. J. Chanc. 277; Fisher v. Brierly, 30 Beav. 267; Foster v. Ley, 2 Bing. N. C. 269. See, also, cases cited in Theobald on Wills, 3d ed. pp. 136-143.

<sup>3</sup> Shippen v. Burd, *supra*.

<sup>4</sup> Sohler v. Eldridge, *supra*; Hathaway v. Fish, *supra*.

<sup>5</sup> Philbrick's Trust, 13 W. R. 570. See, also, Chapter VI, sec. 6.

Where real estate passes directly to the devisees, and in intestacy to the heirs, it is no part of the executor's or administrator's duty to pay the tax. Those who take the lands are liable therefor.<sup>1</sup>

Where the executor or other personal representative has been compelled to pay the tax after he has paid the legacy in full to the heir or legatee without deduction, the question has arisen as to whether such heir or legatee assumes any liability to the executor for the amount of the tax so paid for the legatee's benefit. In such cases the legatees have been held liable, in England,<sup>2</sup> to the executors in actions at law,<sup>3</sup> and the same rule would seem to exist, or at least to be applicable, under the statutes in this country,<sup>4</sup> if not at common law, as for money paid by the executor by compulsion of law for the benefit of the legatee.<sup>5</sup> But it is doubtful whether, in New York, the surrogate's court has jurisdiction over a proceeding of this character, or can compel a legatee to repay. The remedy would seem to be at law.<sup>6</sup>

<sup>1</sup> See sec. 2, *supra*, p. 203, and *Boyd's Est.* 4 W. N. C. 510; *Forbes' Est.* 16 Phila. 356; *Com. v. Coleman*, 52 Pa. St. 468.

<sup>2</sup> See sec. 2, *supra*, pp. 204, 205; Chapter VIII, sec. 1.

<sup>3</sup> *Foster v. Ley*, *supra*; *Bate v. Payne*, 13 Q. B. 900; *Hales v. Freeman*, 1 Br. & B. 391. See *In re Sammon*, 3 M. & W. 381; *Greville v. Greville*, 27 Beav. 596; *Turner v. Martin*, 7 DeG. M. & G. 429.

<sup>4</sup> See *Hunter v. Husted*, *Busby's Eq.* 141; *Atty.-Gen. v. Allen*, 6 Jones' Eq. 144; *Boyd's Est.* 4 W. N. C. 510; *Forbes' Est.* 16 Phila. 356; *Montague v. State*, 54 Md. 486; *Matter of Vanderbilt*, 10 N. Y. Supp. 239.

<sup>5</sup> See, generally, *Matter of Underhill*, 117 N. Y. 471; *Matter of Keech*, N. Y. Law Jour. May 7, 1889; *affd.* 32 N. Y. St. Rep. 227; *Seibert's App.* 18 W. N. C. 278; *Large v. McClain*, 7 Atl. Rep. 101.

<sup>6</sup> See *Matter of Underhill*, *supra*; *Matter of Keech*, *supra*.

Where an executor has paid the tax upon a legacy to an infant, with the knowledge and consent of the latter's general guardian, such executor cannot, on a subsequent accounting, be held liable by a guardian *ad litem* for the amount so paid, upon the ground of an alleged exemption.<sup>1</sup>

§ 4. *Compromises between executors and legatees.*—Where money is received by claimants under a deceased person's will by reason of a compromise contract between them and the executors, sanctioned by a court having jurisdiction, the money so received does not fall within the category of legacies and distributive shares in intestate estates which are subject to federal revenue taxes.<sup>2</sup>

But under the English statute where the testator directed a certain estate to be sold, and the proceeds to be divided between his two sons, but they preferred to take the property themselves under an amicable arrangement, the duty was imposed upon the value of the property although the division of the estate was not in strict pursuance of the decedent's will.<sup>3</sup>

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<sup>1</sup> Farquharson v. Nugent, 6 Dem. 296.

<sup>2</sup> Page v. Rieves, 1 Hughes, 297. But see Brune v. Smith, 13 Internal Rev. Rec. 54.

<sup>3</sup> Atty.-Gen. v. Holford, 1 Price, 426; *Ex parte Stitwell*, 59 L. T. Rep. 539.

## CHAPTER VIII.

### REMEDY AND PRACTICE.

- § 1. Nature of remedy and actions and proceedings thereunder.
2. Lien of the tax and its effect.—Statute of limitations.
  3. Interest and penalties for non-payment of tax.
  4. Retroactive, amendatory and repealing statutes.

§ 1. *Nature of remedy and actions and proceedings thereunder.*<sup>1</sup>—It becomes important under statutes imposing collateral inheritance, legacy and succession taxes to determine not only the proper remedy and practice to be pursued in proceedings to enforce the liability of person or property to the tax, but also the rights and obligations of different parties to the proceeding, or who are liable to be affected thereby. Some of the questions upon this subject have received partial consideration in the preceding chapter.

Where the proceeding to collect a tax is of a statutory nature, the remedy pointed out by the statute is generally exclusive of any other remedy, and must be strictly followed,<sup>2</sup> but in the absence of

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<sup>1</sup> For forms and practice under N. Y. statute, see Appendix; Matter of Astor, 6 Dem. 402, 419; 2 Lawyer Rep. A. 825, note; 19 Abb. N. C. 234, note.

<sup>2</sup> See U. S. v. Penn. Co. 27 Fed. Rep. 540; U. S. v. Trucks, Id. 541; Matter of McPherson, 104 N. Y. 323, 324; Matter of Hall, 27 N. Y. St. Rep. 133; Matter of Howard, 54 Hun, 305; Anderson v. Anderson, 112 N. Y. 104, 113; Central Trust Co. v. R. R.



any designated method of procedure in the statute, it seems that the ordinary or common law methods may be pursued.<sup>1</sup>

Again, as the collateral inheritance or succession tax is not always imposed upon the entire estate of the decedent, but as a rule upon the specific taxable interest or property passing either by will or intestacy,<sup>2</sup> the proceeding to assess and collect the tax, though, as we have seen, frequently involving a personal liability upon the part of the executor, administrator, trustee or legatee, is more strictly analogous to an action *in rem*, as being against the taxable estate or share to satisfy the tax out of the specific property in the hands of the persons having the custody or possession thereof.

Such were the rulings under the succession acts of Congress, and it was accordingly held that no personal liability existed upon the part of the executor as such,<sup>3</sup> though he would appear to have been so liable under the legacy act of Congress.<sup>4</sup>

Hence, under the acts of Congress mentioned, a common law remedy to recover the tax could not be maintained against the executors, the remedy af-

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Co. 15 N. Y. St. Rep. 180; 18 Id. 32; Matter of R. R. Co. 110 N. Y. 374.

<sup>1</sup> U. S. v. Trucks, *supra*; Montague v. State, 54 Md. 483; Torrey v. Willard, 28 N. Y. St. Rep. 641.

<sup>2</sup> See Chapter II, sec. 2; Chapter III, sec. 10.

<sup>3</sup> U. S. v. Allen, 9 Ben. 154; citing 12 U. S. Stat. 485, sec. 412; U. S. v. Trucks, *supra*; U. S. v. Penn. Co. *supra*; U. S. v. Tappan, 10 Ben. 284; Sohier v. Eldridge, 103 Mass. 345; see Succession of Dupuy, 33 A. La., 258.

<sup>4</sup> U. S. v. Tappen, *supra*.

forded by the statute being solely to enforce the lien<sup>1</sup> against the beneficiary who took the legacy.

"The statute,"<sup>2</sup> says Butler, J.,<sup>3</sup> "provided a specific method for collecting the tax on legacies and successions. The tax was made a lien on all the decedent's property and the administrator or executor directed to pay it to the collector. In case he did not the statute provided that the lien should be enforced by suit against anyone having possession and the property be sold under the judgment. There is no provision for suit against the executor or administrator, *and while such suit might be sustained for the failure to pay in the absence of express provision for enforcing the lien under existing circumstances it cannot.* The direction is very specific. On the administrator's or executor's failure to pay, it provides that suit shall be brought against the individual in possession to enforce the lien. The remedy is an ample one, and there is nothing to support an implication that any other was contemplated, and no other remedy can be resorted to." But where there is a personal liability upon the executor or legatee and a right *in rem* against the property is also given, either remedy it would seem may be adopted. Under the Louisiana statute where the property liable to the tax was sold in partition and the proceeds were in the hands of the executor ready for distribution, it was not necessary to bring direct proceedings against the property sold to recover the tax, but

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<sup>1</sup> U. S. v. Trucks, 27 Fed. Rep. 541; U. S. v. Pa. Co. Id. 539. And see Sohler v. Eldridge, *supra*.

<sup>2</sup> Act of June 30, 1864.

<sup>3</sup> U. S. v. Trucks, *supra*.

claim made in the partition proceedings was sufficient.<sup>1</sup>

In North Carolina the proper method of recovering the tax is by bill in equity in the nature of an information in the name of the Attorney-General,<sup>2</sup> and in Maryland, in addition to the liability of the executor, the State may maintain an action of assumpsit to recover the tax against a legatee to whom the executor has paid the legacy without deducting the tax therefrom.<sup>3</sup>

Under the English statutes, however, a strict liability *in personam* for the payment of the tax is imposed upon the executor, administrator or trustee,<sup>4</sup> and where such persons fail to pay the duty they may be personally sued therefor as upon a debt due the crown.<sup>5</sup>

So under the Pennsylvania statute executors, administrators or trustees are, for the purpose of the tax, deemed agents of the State,<sup>6</sup> and the proceeding to collect the tax, is held to be something more than a proceeding *in rem* as the register may by bill filed in the orphans' court compel payment from such per-

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<sup>1</sup> Succession of Dupuy, *supra*.

<sup>2</sup> Atty.-Gen. v. Pierce, 6 Jones' Eq. 240. As to testing constitutionality of such statutes by injunction, see Eyre v. Jacob, 14 Grat. 424.

<sup>3</sup> Montague v. State, 54 Md. 483. See Torrey v. Willard, 28 N. Y. St. Rep. 641; Seibert's App. 18 W. N. C. 278; Matter of Jones, 5 Dem. 36.

<sup>4</sup> See Chapter VII, secs. 2, 3.

<sup>5</sup> *In re* Sammon, 3 M. & W. 381; Bate v. Payne, 13 Q. B. 900; *In re* Wilkinson, 1 C. M. & R. 142; 15 and 16 Vict. ch. 51, sec. 44; 36 Geo. III, ch. 52, sec. 6; 13 and 14 Vict. ch. 97, sec. 8.

<sup>6</sup> Seibert's App. 18 W. N. C. 278.

sonal representatives who have neglected to account for the tax and for the interest due thereon.<sup>1</sup>

So under the New York statute the proceeding partakes both of the nature of a personal liability upon the part of the executor and of an action *in rem* against the property, and in that State the executor or administrator is held personally liable for the payment of the tax where he has paid over the legacies without deduction, and for the costs of the proceeding to collect the tax.<sup>2</sup>

Such executor or administrator is also liable to contempt proceedings for the non-payment of a tax directed to be paid by decree of the surrogate.<sup>3</sup>

Whether in that State the county treasurer or comptroller can maintain an action at law directly against the executor or administrator for taxes due has not been determined;<sup>4</sup> but it would seem that the remedy which has been designated by the statute, to wit, through proceedings to be begun by the district attorney in the surrogate's court, would have to be followed.<sup>5</sup>

In England where the executor or administrator has been compelled to pay the tax he is afforded a

<sup>1</sup> Chapter VII, p. 199; Cullen's Est. 26 W. N. C. 216; James' App. 2 Del. Co. Rep. 164; Banks' Est. 5 P. C. R. 616.

<sup>2</sup> Matter of Clark, 1 Con. Surr. Rep. 431; Matter of Vanderbilt, 10 N. Y. Supp. 239; Est. of Minturn, N. Y. Law Jour. July, 18, 1890.

<sup>3</sup> Matter of Prout, 19 N. Y. St. Rep. 318; Code Civ. Proc. 2555; Matter of McPherson, 104 N. Y. 323; Est. of Gilman, 6 Dem. 358.

<sup>4</sup> See Matter of Jones, 5 Dem. 36; Torrey v. Williard, 28 N. Y. St. Rep. 641.

<sup>5</sup> See p. 195, *supra*. But see Montague v. State, *supra*.

remedy over against the legatee upon whose share the tax has been paid, as for money paid to the latter's use,<sup>1</sup> and the same remedy would seem to be given such personal representatives under our statutes, or at least at common law, as for money paid for the legatee's benefit under compulsion of law.<sup>2</sup>

Under none of the statutes, however, is there any personal liability on the part of the legatee or devisee, as such, to pay the tax unless he actually or constructively accepts or receives the legacy or share, or any part thereof, in which event it is taken *cum onere* subject to the payment of the duty.<sup>3</sup> In Louisiana the tax is held not to be a debt due by the succession in the State, but by the foreign heirs, hence it was necessary to bring suit directly against such heirs.<sup>4</sup>

But it will be a justification and a defense, on the part of the legatee for refusing to pay, that he has absolutely renounced and refused to accept the inheritance or legacy.<sup>5</sup>

A constructive possession by the legatee is, how-

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<sup>1</sup> *Foster v. Ley*, 2 Bing. N. C. 276. See, also, *Hales v. Freeman*, 1 Br. & B. 391; *In re Sammon*, 3 M. & W. 381; *Bate v. Payne*, 13 Q. B. 900; *In re Wilkinson*, 1 C. M. & R. 142; *Greville v. Greville*, 27 Beav. 596.

<sup>2</sup> See Chapter VII, sec. 2, p. 212.

<sup>3</sup> *Atty.-Gen. v. Munby*, 3 H. & N. 826; *Foster v. Ley*, *supra*; *Matter of McPherson*, 104 N. Y. 323; *Matter of Howe*, 112 Id. 103; *Matter of LeFever*, 5 Dem. 185; *Est. of Walsh*, N. Y. Law Jour. July 28, 1888; *Matter of Vanderbilt*, *supra*; Chapter VII, secs. 2, 3.

<sup>4</sup> *Succession of Pargoud*, 13 A. La. 367; *Succession of Dupuy*, 33 Id. 258.

<sup>5</sup> *Matter of McPherson*, *supra*; *Matter of LeFever*, *supra*; *Atty.-Gen. v. Munby*, *supra*.

ever, sufficient to make him liable, as where he was awarded a certain sum in partition proceedings, and exercised acts of ownership over it.<sup>1</sup> And where the devisee taking the property is liable to the succession tax, such liability is not defeated by the fact that in partition proceedings he has only had personal property assigned to him.<sup>2</sup>

So an alien devisee of land who receives its value in such proceedings is estopped from setting up, as against a demand for a succession tax thereon, the fact that by the law of the State where the land is situate the devise to an alien is null and void.<sup>3</sup>

But there is no personal liability upon a purchaser of land at partition sale to pay the tax, where the tax is a lien upon the land itself,<sup>4</sup> and the statute does not authorize a sheriff who has sold land and collected the proceeds under the order of the court in such suit to pay the succession tax upon the descent of such lands.<sup>5</sup> Where, however, the purchaser of land upon which there is a tax due the State is compelled to pay the same to save the land from sale under execution for the tax, he may recover the amount from his vendors upon an implied covenant contained in the words "grant, bargain and sell" in the deed.<sup>6</sup>

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<sup>1</sup> Est. of Walsh, *supra*.

<sup>2</sup> Scholey v. Rew, 23 Wall. 331; Est. of Walsh, *supra*; Brune v. Smith, 13 Int. Rev. Rec. 54. See U. S. v. Watts, 1 Bond, 581; Page v. Rieves, 1 Hughes, 297.

<sup>3</sup> Scholey v. Rew, *supra*.

<sup>4</sup> See sec. 2, *post*, and Chapter VII, as to rights of purchasers. *Wilhelmi v. Wade*, 65 Mo. 39; *Sohier v. Eldridge*, 103 Mass. 349.

<sup>5</sup> *Wilhelmi v. Wade*, *supra*.

<sup>6</sup> *Large v. McClain*, 7 Atl. Rep. 101; *Boyd's Est.* 4 W. N. C. 510.

In New York it seems a certified receipt of the county treasurer or comptroller of the county where jurisdiction was first acquired will be full protection to any subsequent purchaser of such land as against any claim for the tax.<sup>1</sup>

The surrogate's court in the latter State has exclusive original jurisdiction to hear and determine all questions arising in proceedings to collect the tax.<sup>2</sup> The proceeding *to compel payment* of the tax is commenced by petition filed by and in the name of the district attorney—who is required to prosecute the proceeding—in the surrogate's court of the county having jurisdiction over the estate,<sup>3</sup> and it seems that the only method by which the liability of the executor or others to pay the tax can be determined is by such a proceeding.<sup>4</sup>

The proceeding under statutory requirement is based upon a notice, in writing, from the county treasurer or comptroller to the district attorney show-

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<sup>1</sup> Matter of Keenan, 1 Con. Surr. Rep. 226. See Matter of Astor, 6 Dem. 402.

<sup>2</sup> See Chapter VII, sec. 1, p. 193; Matter of McPherson, 104 N. Y. 323, 324; Matter of Keenan, *supra*; Anderson v. Anderson, 112 N. Y. 104, 113; Central Trust Co. v. R. R. Co. 15 N. Y. St. Rep. 180; 18 Id. 32; Matter of R. R. Co. 110 N. Y. 374; U. S. v. Trucks, 27 Fed. Rep. 541.

<sup>3</sup> See Chapter VII, p. 195; Matter of Vanderbilt, 10 N. Y. Supp. 239; Matter of Arnett, 49 Hun, 599, 601; Matter of Farley, 15 N. Y. St. Rep. 727. For Forms under the N. Y. statute, see Appendix. Matter of Astor, 6 Dem. 402, 419; 2 Lawy. Rep. A. 825, note. For a digest of cases under the statute, by Theo. Conolly, Esq., see N. Y. Law Jour. Dec. 24, 1889.

<sup>4</sup> Cases *supra*. But see Frazer v. Peo. 6 Dem. 174; s. c. Matter of Frowe, 20 N. Y. St. Rep. 355; Matter of Astor, *supra*.

ing a "refusal or neglect" to pay the tax upon the part of the parties liable thereto. If, upon receipt of such notice, the district attorney shall have probable cause to believe a tax to be due he shall thereupon initiate the proceedings to collect the tax. There is nothing in the statute requiring previous demand upon any of the parties liable for payment of the tax before the proceeding is begun.<sup>1</sup>

While the district attorney is a proper party upon the final accounting of an executor, as being interested in the estate for the purpose of the tax, yet in order to compel payment he must institute the formal proceedings required by the statute, citing all necessary parties thereto.<sup>2</sup>

The executor, administrator or trustee, or any other party interested<sup>3</sup> in the estate liable to the tax may also, under the act, institute proceedings to have the property assessed or valued for the purpose of ascertaining the amount of the tax due.<sup>4</sup> But it will be observed that this proceeding is of an entirely different nature from the one directed to be begun by the district attorney, which is, primarily, to compel

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<sup>1</sup> See Appendix, sec. 17; *Matter of Vanderbilt*, 10 N. Y. Supp. 239. Demand seems to have been necessary under the federal statute. See *U. S. v. Penn. Co.* 27 Fed. Rep. 539. What not a refusal to pay tax as regards costs of district attorney, see *Frazer v. Peo. supra*.

<sup>2</sup> Cases *supra*, and *Matter of Arnett*, 49 Hun, 599-601; *Matter of Vanderbilt, supra*. See *Matter of Farley*, 15 N. Y. St. Rep. 727.

<sup>3</sup> As to meaning of this phrase, see *Matter of Wagner*, 119 N. Y. 32; *Matter of Arnett, supra*.

<sup>4</sup> Appendix, sec. 13; *Frazer v. Peo. supra*. See *Matter of Farley, supra*.



payment of the tax from parties who have neglected or refused to pay the same. Hence the State is not bound by a decree made in a proceeding begun by the executor under this provision of the statute, unless it is made a party, upon proper notice to the county treasurer or comptroller, and it would seem that the district attorney should also be notified of such proceeding.<sup>1</sup>

*Ex parte* orders or decrees relieving persons from the tax are not, therefore, binding upon the district attorney or comptroller, and are no bar to proceedings begun by them to collect the tax.<sup>2</sup> As a general rule it is doubtful whether anything will bar the claim of the State excepting payment of the tax, or a decree of a competent court having jurisdiction in the premises. Even a receipt for payment of the tax will not act as an estoppel against the State to recover a tax or interest due where the receipt was simply for the amount of tax fixed by the court, and does not express the idea that the money was received in satisfaction, discharge or payment of the amount of the tax claimed by the State.<sup>3</sup> And a receipt is no bar to proceedings to collect taxes which, by mistake or fraud, were omitted to be paid.<sup>4</sup>

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<sup>1</sup> Matter of Vanderbilt, *supra*; Matter of McPherson, 104 N. Y. 323. See Crane v. Mayor, 13 N. Y. St. Rep. 342; Lockwood v. Carr, 4 Dem. 515; Davis v. Crandall, 101 N. Y. 311; Succession of Dupuy, 33 A. L. 261. But see Matter of Astor, 6 Dem. 402.

<sup>2</sup> Id. and Matter of Lenox, 9 N. Y. Supp. 895; Matter of Hochster, Id. 896.

<sup>3</sup> Com.'s. App. (Fagely's Est.), 128 Pa. St. 613. See Matter of Vanderbilt, 10 N. Y. Supp. 239; Matter of Astor, *supra*; Com.'s. App. (Bittinger's Est.), 129 Pa. St. 338; Com. v. Freedley, 21 Id. 33; Brewer's Est. 16 Pitts. L. J. N. S. 114; 15 Id. 435.

<sup>4</sup> Id. and Brewer's Est. *supra*. As to effect of receipt upon

In fact, whether the proceeding is one begun by the State through its designated officials, or by the persons interested in the estate, all parties under the statute interested in the property as heirs, legatees or public officials are entitled to notice<sup>1</sup> and hearing, as without these the proceeding, as to them, will be void.<sup>2</sup>

The rights of the parties to this proceeding under the New York statute, have been aptly described by Earl, J., in the Matter of McPherson.<sup>3</sup> "Upon return of the citation the person cited may allege any reason whatever which shows that he ought not to pay the tax. He may answer that he has not had an opportunity to be heard upon the appraisal, and that, therefore, the tax as to him is void. He may show any error affecting the validity of the tax, and that he has never received and never will receive the inheritance or legacy, and it would be a justification for refusing to pay, that he had absolutely renounced and refused to accept or receive the inheritance or legacy. . . . When the section provides that the surrogate shall designate by order to whom the notice is to be given, it is necessarily implied that he shall designate *all persons entitled to notice*. If he should omit to do so it would be an error on account of which any tax imposed upon the

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proceedings of district attorney where there is property in different counties liable to the tax, see Matter of Keenan, 1 Con. Surr. Rep. 226.

<sup>1</sup> Orders appointing appraisers should specify persons entitled to notice. Matter of Astor, 6 Dem. 402; Matter of McPherson, 104 N. Y. 322.

<sup>2</sup> Cases *supra*, and Matter of Miller, 110 N. Y. 216, 224; Matter of Arnett, 49 Hun, 602.

<sup>3</sup> *Supra*.

person not notified or heard, would be invalid as having been imposed without jurisdiction."

In a proceeding, however, to vacate the assessment for being without notice, it will be presumed in the absence of proof to the contrary that the surrogate gave the notice required by statute.<sup>1</sup>

Under the statute it would seem that the surrogate has the power to order a reference for the purpose of determining any doubtful or disputed question of fact, and he may take all necessary testimony<sup>2</sup> in relation thereto.

As to the effect of his decree it is confirmatory of the rights of the State where made upon proper notice, and establishes an additional right, that of recovery, by virtue of itself,<sup>3</sup> and such decree cannot be vacated, as having been made inadvertently, upon a motion based upon a change in the law affected by a statute passed after the rendering of the decree and before payment of the tax.<sup>4</sup>

Under these statutes parties aggrieved by the imposition of the tax are afforded a remedy by appeal,<sup>5</sup> and the State is afforded the same remedy where it is aggrieved by any error of the court in refusing to assess or impose the tax as required by law. Some of the questions relating to appeals from proceedings before

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<sup>1</sup> Matter of Miller, 110 N. Y. 216.

<sup>2</sup> Code of Civ. Proc. sec. 2546; see Matter of Pearsall, 21 N. Y. St. Rep. 305; Matter of Prout, 3 N. Y. Supp. 831; Matter of Astor, 6 Dem. 402; Matter of McPherson, *supra*.

<sup>3</sup> Matter of Miller, 6 Dem. 119; 110 N. Y. 216.

<sup>4</sup> Id.; see Chapter III, sec. 6, and *post*, sec. 4.

<sup>5</sup> Matter of McPherson, 104 N. Y. 323. As to power of U. S. Supreme Court to review decisions of State court under these statutes, see *Carpenter v. Penn.* 17 How. 456, 462.

the appraiser having already been considered.<sup>1</sup> Upon appeal to the surrogate from an assessment of the tax, security should be given to pay the tax and costs imposed.<sup>2</sup>

In Pennsylvania, where the tax is imposed upon real estate, the heir and not the administrator is given the right of appeal from the appraiser's report, but upon questions relating to the appraisement<sup>3</sup> of the personalty the administrator only has the right of appeal,<sup>4</sup> and unless the report of the appraiser shows *prima facie* error no appeal can be taken therefrom.<sup>5</sup>

Many of the statutes imposing this tax provide for restitution where the tax is erroneously paid.<sup>6</sup>

In New York<sup>7</sup> application for restitution of taxes

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<sup>1</sup> Chapter V, sec. 5. As to whether in these proceedings the surrogate can be reviewed on appeal without findings of fact and conclusions of law has not been determined. The proceedings are of a summary nature, the appraiser in ascertaining the value of the property, receives all proof bearing upon the subject (see Chapter V, p. 117), and as additional proof will be received by the surrogate upon motion to confirm the appraiser's report, findings would seem to be wholly foreign to a proceeding of this nature. Consult, however, *Matter of Falls*, 29 N. Y. St. Rep. 759, and cases cited N. Y. Code Civ. Proc. sec. 2545.

<sup>2</sup> Appendix, L. N. Y. sec. 13; *Est. of Phelps*, N. Y. Law Jour. January 23, 1890. As to costs of district attorney under the statute, see Chapter VII, p. 198, note; *Matter of Stucke*, N. Y. Daily Reg. April 25, 1889; *Matter of Frowe*, s. c. *Frazer v. Peo.* 20 N. Y. St. Rep. 355; *Est. of Minturn*, N. Y. Law Jour. July 18, 1890.

<sup>3</sup> See Chapter V, sec. 5.

<sup>4</sup> *Com. v. Coleman*, 52 Pa. St. 468.

<sup>5</sup> *Goldstein's Est.* 16 Phila. 319.

<sup>6</sup> See Chapter IV, pp. 112, 113.

<sup>7</sup> Appendix, L. N. Y. sec. 12. *Red. Surr. Pr.* 4th ed. p. 586, considers this section incapable of enforcement under the N. Y. Constitution, Art. 7, sec. 8.

paid erroneously must be made to the State treasurer on satisfactory proof rendered to the State comptroller by the county treasurer or county comptroller of such erroneous payment, and the application should be made within five years from the date of the payment. In this respect the method pointed out by the statute, is exclusive of any other remedy.<sup>1</sup>

But the question of restitution does not properly arise upon a mere appeal from the order assessing and fixing the tax taken after the payment of the tax to which appeal neither the comptroller or the State treasurer is made a party.<sup>2</sup>

§ 2. *Lien of the tax and its effect.*—*Statute of limitations.*—As a general rule taxes do not become liens upon the property subject to taxation until they have been assessed in the manner required by statute,<sup>3</sup> unless specially declared to be liens, when they are termed statutory liens, and by force of statute immediately impress themselves as a liability upon the property.<sup>4</sup> Under these statutes, the tax is generally made a lien upon real estate and sometimes upon personal property.

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<sup>1</sup> Matter of Howard, 54 Hun, 305; s. c. 27 N. Y. St. Rep. 8; Dewey v. Supervisors, 62 N. Y. 294; see, also, Matter of Hall, 27 N. Y. St. Rep. 133; Matter of Keech, N. Y. Law Jour. May 7, 1889; affd. 32 N. Y. St. Rep. 227.

<sup>2</sup> Matter of Hall, *supra*. For return of duty under English statutes, see Layton on Legacy and Succession Duties, 7th ed. p. 236, *et seq.*

<sup>3</sup> Lathers v. Keogh, 109 N. Y. 583; Dowdney v. The Mayor, 54 Id. 186.

<sup>4</sup> Heine v. Commissioners, 19 Wall. 655; Tompkins v. Little Rock, &c. R. R. Co. 125 U. S. 119.

Under the English acts a very comprehensive lien is provided for upon real property,<sup>1</sup> the rights of *bona fide* purchasers without notice being at the same time protected,<sup>2</sup> and to a certain extent, personal property liable to the tax is also subjected to a lien to secure its payment.

Under the New York statutes,<sup>3</sup> the tax remains a general lien until it is paid. It also remains a charge upon the real estate until paid,<sup>4</sup> and there is no limitation of time in favor of executors or legatees against the tax as a penalty or forfeiture under the civil code.<sup>5</sup>

A certified copy of the county treasurer's receipt showing payment of the tax will be full protection to *bona fide* purchasers,<sup>6</sup> against any future claim.

The present statute of Pennsylvania,<sup>7</sup> provides for a statutory lien of five years upon real estate, but after that time the lien is presumed to be paid as against purchasers of such real estate.<sup>8</sup>

Under the original act of 1826, the tax became a lien from the time of the death of decedent when the

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<sup>1</sup> 16 and 17 Vict. ch. 51, sec. 42.

<sup>2</sup> Id. sec. 52.

<sup>3</sup> Appendix, sec. 2.

<sup>4</sup> Sec. 6.

<sup>5</sup> Matter of Vanderbilt, 10 N. Y. Supp. 239; citing Code of Civ. Proc. sec. 384, providing that "an action upon a statute for a forfeiture or penalty to the people of the State" must be brought within two years after the cause of action accrues.

<sup>6</sup> Matter of Keenan, 1 Con. Surr. Rep. 226; Matter of Astor, 6 Dem. 402.

<sup>7</sup> Appendix, secs. 7 and 20.

<sup>8</sup> Id. sec. 12.

tax accrued and so remained until fully paid.<sup>1</sup> Subsequently, by act of 1855, it was limited to 20 years.<sup>2</sup>

The tax or lien, however, under these statutes only attaches to what remains for distribution after the expense of administration, debts and rightful claims of third parties are provided for. It attaches upon the net succession to the beneficiaries and not upon the securities or land in which the estate of the deceased may be invested.<sup>3</sup>

The lien of the tax is, however, perpetual against owners, devisees or legatees, and the limitation in the acts apply only to the purchasers of such real estate.<sup>4</sup>

One of the most interesting cases upon the subject of the lien is that of Mellon's Appeal,<sup>5</sup> in which the Supreme Court of Pennsylvania decided two important questions. First, as to the effect of the failure on the part of the State to prosecute the lien created in its favor as against a *bona fide* purchaser without notice within twenty years after the tax accrued,

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<sup>1</sup> Com. v. Coleman, 52 Pa. St. 470.

<sup>2</sup> Mellon's App. 114 Id. 364.

<sup>3</sup> See Cases cited, Chapter V, sec. 2; Orcutt's App. 97 Pa. St. 179; Com's. App. (Avery's Est.), 34 Id. 204; Strode v. Com. 52 Id. 181; Rubincam's Est. 38 Leg. Int. 261; Com's. App. (Cooper's Est.), 127 Pa. St. 435; affg. Cooper v. Com. 5 P. C. R. 271; Cullen's Est. *supra*; Matter of Enston, 113 N. Y. 181; Mellon's App. *supra*.

<sup>4</sup> Cullen's Est. 26 W. N. C. 216; James' App. 2 Del. Co. Rep. 164; Mellon's App. *supra*.

Where a debt is barred by the statute of limitations, and is subsequently recognized by the decedent as a valid claim in the shape of a legacy for the amount, it is not liable to duty. William v. Naylor. 3 Y. & C. 208; see Chapter VI, sec. 6.

<sup>5</sup> *Supra*.

and, secondly, the effect of such neglect upon collateral heirs still possessing the property. The facts showed that in 1849 the wife of one B. died intestate, seized of certain lands, leaving as her only heirs her husband and three minor children. Under the statute the land descended to the children subject to the father's life-estate. In 1864 the eldest daughter died intestate without issue and unmarried, and subject to the life-estate and charged with the tax her third interest devolved upon her brother and sister. There was no administration of her estate. In 1866 the father as guardian of the two children sold three acres of the land, and in 1870 at maturity the children conveyed four acres to their father B., he releasing his life-estate in the residue of the property. He died in 1872 devising the land to children by a second marriage. The share of one child was sold in partition to Mellon and the other child sold part of her share retaining a portion. In holding that the action could not be maintained by the State the court said,<sup>1</sup> "If the tax accrued at the time of Mrs. B.'s decease in 1864 by the devolution of her undivided interest in the land, and the Commonwealth might have proceeded at any time thereafter to have the same appraised and the amount of tax ascertained with a view of its ultimate collection, the lapse of twenty years without any steps having been taken in that direction raises a conclusive presumption of payment as to *bona fide* purchasers from those to whom the remainder in fee descended, and the lien theretofore existing in favor of the Commonwealth forthwith ceased as to such purchasers."

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<sup>1</sup> 569.



It was further held that the fact that no administration was had upon the estate liable to the tax, for which reason the matter was not brought to the attention of the register, did not operate to remove the bar and that as to the portion of the estate unsold subject to the tax that it must be deemed to have been constructively paid by the fact that the money realized from judicial sales of the interest bound by the lien was sufficient to have paid the tax, and the court said, "If the claim had been made the court would doubtless have retained its grasp on a sufficient amount of the funds to pay the tax lien, but no claim upon the fund was ever made. . . . That fact did not, however, prevent the discharge of the lien by judicial sales producing funds applicable primarily to the lien and more than sufficient to pay it."<sup>1</sup>

And where the purchaser of land upon which there was a lien for unpaid taxes due the State was compelled to pay the same to save the land from sale under execution, he was allowed to recover the amount paid from his vendors upon an implied covenant in the deed of sale.<sup>2</sup>

The acts of Congress subjected the property liable to the tax to liens and specified the method of enforcing payment, but as we have seen<sup>3</sup> they did

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<sup>1</sup> Mellon's App. *supra*; see Martin's Est. 19 P. L. J. N. S. 145; Willing's Est. 33 Leg. Int. 54; s. c. 2 W. N. C. 307, 308; Wilhelmi v. Wade. 65 Mo. 39; Succession of Dupuy, 33 A. La. 260; Matter of Keenan, 1 Con. Surr. Rep. 226; see, also, Kortright v. Blunt, 12 How. Pr. 424; reversed on another ground, 21 N. Y. 343; Daly v. Sanders, 9 N. Y. St. Rep. 794.

<sup>2</sup> Large v. McClain, 7 Atl. 101; see Boyd's Est. 4 W. N. C. 510.

<sup>3</sup> *Supra*, p. 205.

not create a personal liability on the part of the legatee unless he received the taxable interest or property, and in order to enforce the lien there must have been a neglect or refusal to pay the tax by the person having the property after demand made.<sup>1</sup> The duty became a lien from the time the tax became due and payable.<sup>2</sup> After 20 years the tax was presumed to be paid and the lien ceased.<sup>3</sup>

So purchasers of land upon the descent of which a succession tax is due under these acts<sup>4</sup> incur no personal liability to pay it, but take the title subject to the lien and it seems a party is not liable for payment of the tax due upon the descent of the land greater than his share in the land.<sup>5</sup>

Where the land which is subject to the tax has been sold in parcels successively, the last sold if of sufficient value is liable for the whole tax, notwithstanding that the first sold at judicial sale was sufficient to have paid the tax. The last lot sold stands in relation of principal to the first,<sup>6</sup> and where there are several tracts of land of a decedent to be valued

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<sup>1</sup> U. S. v. Penn. Co. 27 Fed. Rep. 539; U. S. v. Trucks, 27 Id. 541; Sohler v. Eldridge, 103 Mass. 349; Wilhelmi v. Wade, *supra*.

<sup>2</sup> Clapp v. Mason, 94 U. S. 592; U. S. v. Allen, 9 Ben. 156; U. S. v. Hazard, 8 Fed. Rep. 380.

<sup>3</sup> Mason v. Sargent, 104 U. S. 690. As to when action to recover back penalty illegally exacted upon succession tax is not barred, see Wright v. Blakeslee, 101 U. S. 174.

<sup>4</sup> 2 Bright, 370, sec. 327.

<sup>5</sup> Wilhelmi v. Wade, *supra*; Succession of Dupuy, 33 A. La. 260. But see Large v. McClain, *supra*.

<sup>6</sup> Martin's Est. 19 P. L. J. N. S. 145; Distinguishing Mellon's App. 114 Pa. St. 564.

for the tax the tracts should be valued separately and as occupied by the tenants.<sup>1</sup>

§ 3. *Interest and penalties for non-payment of tax.*

—These acts frequently impose interest from the time the tax accrues, which is generally at decedent's death, until its final payment, and also penalties for non-payment of the tax when due. Ordinarily, a tax does not carry interest by implication of law,<sup>2</sup> as in the case of a debt, and in all systems of taxation where default is made in the payment of the tax interest is added by way of penalty for such default.<sup>3</sup>

Statutes imposing penalties are to be strictly construed against the claim.<sup>4</sup>

Under the Pennsylvania acts of 1849 and 1855, if the tax which was imposed upon all estates including remainders was not paid within nine months after decedent's death it carried a penalty of 12 per cent. from the date of death.<sup>5</sup>

<sup>1</sup> McKean's Est. 12 P. L. J. N. S. 299. But see Matter of Keenan, 1 Con. Surr. Rep. 226.

<sup>2</sup> Cooley on Taxation, 2d ed. p. 17; Hilliard on Taxation, p. 16.

<sup>3</sup> Matter of Prout, 53 Hun, 543; Brewer's Est. 16 P. L. J. N. S. 114; Banks' Est. 5 P. C. R. 615.

<sup>4</sup> Matter of Prout, *supra*; *affd.* 117 N. Y. 650. And see Chase v. R. R. Co. 26 N. Y. 525.

<sup>5</sup> Com. v. Smith, 20 Pa. St. 100; Com.'s. Appeal (Avery's Est.), 34 Id. 204; McKean's Est. 12 P. L. J. N. S. 299, 300; James' App. 2 Del. Co. Rep. 164; Com. v. Bausman. 10 L. Bar. 189. The act of 1855 substituting 6 per cent. annual charge for the 12 per cent. penalty is not inconsistent with the act of 1887. Com.'s. App. (Fagely's Est.), 128 Pa. St. 612; Banks' Est. 5 P. C. R. 614; see these acts considered and explained as to the rate of interest, Mellon's App. 114 Pa. St. 570, 575; Del Busto's Est.

Under the act of 1887, the interest on taxes for which tenant in remainder is liable begins to run only from the time such tenant has the right of actual possession, or enjoyment.<sup>1</sup>

Where under these statutes there has been "an unavoidable cause of delay" or necessary litigation in the settlement of the estate, the penalty for delay in payment of the tax cannot be imposed but in such cases only 6 per cent. interest is recoverable on the tax from the end of the year succeeding decedent's death,<sup>2</sup> and by the New York statute<sup>3</sup> the penalty of 10 per cent. imposed for the non-payment of the tax is likewise not chargeable in such cases.

The burden, however, under this clause of the statute rests upon the party claiming exemption from penalty to show that he comes within the provisions of the act, namely: that the settlement of the estate has been delayed by necessary litigation or other unavoidable cause, and that, therefore, he is not in a condition to settle the estate or to pay the tax.<sup>4</sup>

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45 Leg. Int. 474; s. c. 23 W. N. C. 111; Com's. App. (Cooper's Est.), 127 Pa. St. 435; 17 Atl. 1096.

<sup>1</sup> Com's. App. (Cooper's Est.), *supra*; and see Wharton's Est. 10 W. N. C. 106; King's Est. 11 Phila. 26; Brewer's Est. 16 P. L. J. N. S. 114.

<sup>2</sup> Com's. App. (Fagely's Est.), *supra*; Banks' Est. *supra*; McKean's Est. 12 P. L. J. N. S. 299, 300; Mellon's App. *supra*; Com. v. Bausman, 10 L. Bar. 189; Com's. App. (Avery's Est.), 34 Pa. St. 204; Matter of Prout, 53 Hun. 541; 117 N. Y. 650; Matter of Stewart, 30 N. Y. St. Rep. 738. As to rate of penalty under Acts of Congress, and when actions to recover back penalty erroneously paid is not barred by statute of limitation, see Wright v. Blakeslee, 101 U. S. 174.

<sup>3</sup> Appendix, secs. 4 and 5; see these provisions explained per Van Brunt, P. J., Matter of Prout, *supra*.

<sup>4</sup> Matter of Prout, *supra*, 544.

Where decedent's estate largely consisted in business enterprises in partnership with others and the executor did not receive the proceeds of these investments but they went to swell the *corpus* of the estate until final settlement, and the transactions were so complicated that it was unsafe for the executor to estimate what amount would be subject to the tax, and the appraisers themselves reduced their first report of the taxable value by a large amount, it was held that there was "unavoidable cause" of delay for failing to make the estimate within a year after decedent's death, and that the penalty could not be exacted though such delay continued thirteen years.<sup>1</sup>

But the fact that the parties were foreigners and ignorant of the law is no excuse for bringing them within the exceptions of the act as regards penalty,<sup>2</sup> and it would seem that the fact that all proceedings in relation to the estate are stayed upon proceedings for revocation of probate of the will of decedent does not prevent the running of ordinary interest charged for non-payment of the tax.<sup>3</sup>

Where pending an appeal<sup>4</sup> from the appraiser's report the parties liable to the tax under the decree of the lower court make voluntary payment of it, this does not estop the State from prosecuting the appeal

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<sup>1</sup> Com's. App. (Fagely's Est.), 128 Pa. St. 603; s. c. 18 Atl. 386.

<sup>2</sup> McKean's Est. *supra*. As to what constitutes excusable delay and when executor liable for interest, see Banks' Est. 5 P. C. R. 614, 616.

<sup>3</sup> Matter of Stewart, 30 N. Y. St. Rep. 738; citing Code Civ. Proc. secs. 2650 and 406.

<sup>4</sup> Practice on such Appeals, see Chapter V, sec. 5.

and recovering interest upon the tax to the date of payment.<sup>1</sup>

§ 4. *Retroactive, amendatory and repealing statutes.*—The question as to whether estates vesting and undistributed before the passage of the law become subject to taxation, seems to be purely one of legislative intent.

In England the "Succession Duty Act" is in many respects plainly retroactive as well as prospective, in its operations, but in this country retroactive statutes are not generally favored and the statutes are held to apply only to property passing upon the death of a decedent occurring after the particular statute went into effect. Acts, however, which impose a tax upon estates vesting or undistributed before such acts became operative, though retroactive, are held to be constitutional.<sup>2</sup>

But a retroactive operation will not be given by construction so as to subject to the tax estates passing prior to the passage of the act, though they be subject to life-estates which do not fall until after the statute became operative.<sup>3</sup>

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<sup>1</sup> Com's. App. (Fagely's Est.), 128 Pa. St. 603; s. c. 24 W. N. C. 473; 18 Atl. 386. As to effect of receipt in full for tax given by State, see Chapter VII, p. 208; sec. 1, *supra*, p. 223, and Brewer's Est. 16 P. L. J. N. S. 114; 15 Id. 435; Com's. App. *supra*; Matter of Keenan, 1 Con. Surr. Rep. 226; Matter of Vanderbilt, 10 N. Y. Supp. 239.

<sup>2</sup> Chapter II, sec. 14; Carpenter v. Penn. 17 Howard, 456; Atty.-Gen. v. Middleton, 3 H. & N. 125; Short's Est. 16 Pa. St. 66.

<sup>3</sup> Folsom v. U. S. 21 Fed. Rep. 37; Blake v. McCartney, 4 Cliff. 101; Succession of Oyon, 6 R. La. 504; Succession of Dey-

Under this rule it has been held in New York that property conveyed by irrevocable deed of trust to trustees to pay the income to the grantor during life, with remainder over to collateral heirs after her death, which was executed and took effect before the passage of the act, is not liable to taxation though the grantor died afterwards.<sup>1</sup>

So as the tax is generally imposed upon the estate owned by the decedent passing at the time of death, interest or income in the nature of increase or accretions to the estate subsequently arising is not liable.<sup>2</sup>

There are, however, cases which seem to be exceptions to this rule as in the case of powers of appointment not executed until long after testator's death;<sup>3</sup> and in England, under the peculiar provisions of the statute, a tax has been allowed upon the subsequent increase in value of property already once assessed.<sup>4</sup>

So generally the rate of the tax is that imposed or fixed at the time the estate passed and became subject to the tax, and not that imposed by subsequent statute.<sup>5</sup>

roud, 9 Id. 357; *Carpenter v. Penn.* *supra*; *Matter of Cogswell*, 4 Dem. 248; *Matter of Hendricks*, 1 Con. Surr. Rep. 301.

<sup>1</sup> *Matter of Hendricks*, *supra*.

<sup>2</sup> *Miller's Est.* 45 Leg. Int. 175; *Com. v. Freedley*, 21 Pa. St. 33-36; *Com.'s App. (Cooper's Est.)*, 127 Pa. St. 435; affg. 5. P. C. R. 275; *Atty.-Gen. v. Sefton*, 11 H. L. Cases, 257-269.

<sup>3</sup> Chapter VI, sec. 5; see *Matter of Stewart*, 30 N. Y. St. Rep. 738.

<sup>4</sup> See Chapter V, sec. 5; *Atty.-Gen. v. Dardier*, L. R. 11 Q. B. D. 16.

<sup>5</sup> *Com. v. Eckert*, 53 Pa. St. 102; *Com. v. Smith*, 20 Id. 100; *King's Est.* 11 Phila. 26; *James' App.* 2 Del. Co. Rep. 164.

In New York by statute, and doubtless in many other States, the common law rule that a statute was deemed to date and take effect as of the first day of the session at which it was passed,<sup>1</sup> is now abrogated;<sup>2</sup> and in that State, every law, unless a different time shall be prescribed therein, commences and takes effect throughout the State on and not before the 20th day after the day of its final passage as certified by the Secretary of State.<sup>3</sup>

This provision has been considered in connection with acts imposing collateral inheritance taxes, and it has been held that although the act of 1885 contained the words: "After the passage of this act," the law did not take effect until twenty days after its passage, and that therefore property passing by will of one dying after the passage of the act but prior to the day upon which it took effect was not liable to the tax.<sup>4</sup>

With regard to amendatory statutes the rule seems to be general that they have no retroactive force upon taxes already due unless clearly intended by the legislature, as the portions of the amended sections which are merely copied without change are not to be considered as repealed and again enacted but to have been the law all along, and the new parts

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<sup>1</sup> *Latless v. Holmes*, 4 D. & E. 660; *Panther's Case*, 6 Bro. P. C. 486.

<sup>2</sup> *Matter of Kemeys*, 56 Hun, 117; s. c. 9 N. Y. Supp. 182. See, also, *Matter of Howe*, 48 Hun, 236; *affd.* 112 N. Y. 103.

<sup>3</sup> 1 N. Y. Rev. Stat. 7th ed. p. 433, sec. 12.

<sup>4</sup> *Matter of Howe*, *supra*; overruling *Matter of Chardavoyne*, 5 Dem. 466. *Matter of Cager*, 46 Hun, 660 is also overruled on this point. See 111 N. Y. 347, and *Matter of Kemeys*, *supra*.



or changed portions are not to be taken as the law at any time prior to the passage of the amended act.<sup>1</sup>

So where an amendatory act was passed by the legislature, purporting to exempt adopted children theretofore liable which it was declared should "take effect immediately" and subsequent to its passage, but before being approved by the executive a decree was made taxing adopted children, it was held that the decree was not vitiated by the amendatory statute, as it did not become a law at the time of its passage, but only subsequently and from the time of its approval by the executive.<sup>2</sup>

So where adopted children were exempted by a statute<sup>3</sup> which was declared to be amendatory of the prior law, it was held not retroactive and that such adopted children as were liable under the former act<sup>4</sup> continued so liable and the rights of the State were not affected by the fact that the tax had not been paid at the time of the passage of the amendatory act.<sup>5</sup>

Nor does such a statute affect the vested rights of the State against such children theretofore liable although proceedings to collect the tax were not com-

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<sup>1</sup> Matter of Arnett, 49 Hun, 599; Matter of Miller, 110 N. Y. 223; citing Ely v. Holton, 15 N. Y. 595.

<sup>2</sup> Matter of Kemeys, *supra*; Matter of Howe, 48 Hun, 236; affd. 112 N. Y. 103; Matter of Hughes, N. Y. Law Jour. July 27, 1889.

<sup>3</sup> Appendix, Law of 1887, ch. 713, sec. 1. See upon this subject, Chapter III, sec. 6.

<sup>4</sup> L. 1885, ch. 483.

<sup>5</sup> Matter of Miller, *supra*; affg. 47 Hun, 394; Matter of Brooks, 6 Dem. 165; Matter of Spencer, 21 N. Y. St. Rep. 145.

menced until after the amended statute went into effect.<sup>1</sup>

It seems now, however, that all adopted children and others in the same class are exempted in New York,<sup>2</sup> where no assessment was made against them by order of the surrogate at the time of the passage of the last named act.<sup>3</sup>

So the act of 1890,<sup>4</sup> relieving certain charitable and religious institutions from the tax being clearly prospective in its operation and applicable only to future cases, a tax due before the act went into operation<sup>5</sup> may still be enforced.<sup>6</sup>

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<sup>1</sup> *Matter of Kemeys* (per Barrett, J., reviewing cases), 56 Hun, 117; 9 N. Y. Supp. 182. For other authorities see *Matter of Arnett*, 49 Hun, 599; *Matter of Kissam*, 6 Dem. 171; *Matter of Ryan*, 18 N. Y. St. Rep. 992; *Matter of Cager*, 111 N. Y. 347; *Matter of Brooks*, 6 Dem. 165; *Estate of Hendricks*, 1 Con. Surr. Rep. 301; *Matter of Thompson*, s. c. *Warrimer v. The People*, 6 Dem. 211; *Est. of Shaw*, N. Y. Daily Reg Apr. 3, 1889; *contra*, *Matter of Cager*, 46 Hun, 660; overruled in 111 N. Y. 347; *Matter of Spencer*, 21 N. Y. St. Rep. 145.

<sup>2</sup> L. N. Y. Appendix, sec. 25, as amended by L. 1889, ch. 479. The children of such adopted children are, however, not within the exemption of the statute. *Est. of Bird*, N. Y. Law Jour. July 31, 1890. In Conn. they are relieved by express provision of the statute, *supra*, Chapter III, p. 48.

<sup>3</sup> L. 1889, *supra*; *Matter of Kemeys*, 56 Hun, 117; 9 N. Y. Supp. 182; *Est. of Hughes*, N. Y. Law Jour. July 27, 1889; *Est. of Thorne*, Id. Jan'y 21, 1890.

<sup>4</sup> L. N. Y. 1890, ch. 553, Appendix.

<sup>5</sup> June 7, 1890.

<sup>6</sup> *Sherrill v. Christ Church*, 31 N. Y. St. Rep. 896; reversing *Matter of Van Kleeck*, 55 Hun, 472; see, also, *Est. of Minturn*, N. Y. Law Jour. July 18, 1890. As to the effect of the act of Pennsylvania of 1887 upon prior statutes of that State, see *Com's. App.* (Fagely's *Est.*), 128 Pa. St. 612; s. c. 18 Atl. 386; *Del Busto's Est.* 23 W. N. C. 111; *Com's. App.* (Cooper's *Est.*), 127 Pa.

Where, however, the statute under which it is sought to collect the tax has not merely been amended but absolutely repealed, and the remedy taken away, all proceedings under the prior act fall, and the tax cannot afterwards be collected.<sup>1</sup>

Where, however, there is a saving clause as to taxes accruing under vested interests prior to the repealing act, such taxes may be assessed and collected afterwards.<sup>2</sup>

Where the decedent died before the repealing act, and the legatee or successor did not come into possession, nor his rights accrue until after the repealing act went into effect, it seems the tax is not saved by the saving clause.<sup>3</sup>

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St. 435; Com.'s App. (Bittinger's Est.), 129 Id. 338; Mellon's App. 114 Id. 570; Banks' Est. 5 P. C. R. 614; Goldstein's Est. 16 Phila. 319; Wayne's Est. 2 P. C. R. 93. See, also, Fox v. Com. 16 Grat. 1.

<sup>1</sup> Matter of Arnett, 49 Hun, 603; Knox v. Baldwin, 80 N. Y. 610; Nash v. White's Bank, 105 Id. 243; People v. Supervisors, 67 Id. 109; Bailey v. Mason, 4 Minn, 550; Dunwell v. Bidwell, 8 Id. 34; North Canal St. Road, 10 Watts (Pa.), 351; Cooley on Taxation, 2d ed. p. 18; Fox's Administrator v. Com. 16 Grat. 1; Eyre v. Jacob, 14 Id. 422; see Quessart v. Canonge, 3 La. 560, and Arnaud v. Holland, 3 Id. 337, where it was held that where the tax becomes due before the repealing act, the rights of the State under the law existing at the time remain unaffected by the repealing act.

<sup>2</sup> The Act of Congress, 1870, 16 U. S. Stat. 261, sec. 17, repealing the legacy and succession acts, contained a clause saving "All taxes properly assessed or liable to be assessed, or accruing under the provisions of former acts or drawbacks, or which may hereafter accrue under said acts, etc." See, construing this sec. May v. Slack, 16 Inter. Rev. Rec. 134; U. S. v. Townsend, 8 Fed. Rep. 306; Clapp v. Mason, 94 U. S. 589.

<sup>3</sup> Mason v. Sargent, 104 U. S. 689; see 23 Inter. Rev. Rec.

155; Helman v. U. S. 15 Blatch. 13; U. S. v. Insurance Co. 9 Ben. 413; Clapp v. Mason, *supra*; U. S. v. Hazard, 8 Fed. Rep. 380; U. S. v. Kelley, 28 Id. 845; U. S. v. Brice, 8 Id. 381. See U. S. v. Rankin, 8 Id. 872, where the various conflicting decisions under the legacy and succession acts of Congress are considered by Treat, D. J.; and see, generally, Com. v. Standard Oil Co. 101 Pa. St. 149.

# STATE OF MASSACHUSETTS.

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## CHAP. 425. AN ACT IMPOSING A TAX ON COLLATERAL LEGACIES AND SUCCESSIONS.

*Be it enacted, etc., as follows :*

### SECTION 1. TAX IMPOSED ON COLLATERAL LEGACIES AND SUCCESSIONS.

All property within the jurisdiction of the Commonwealth, and any interest therein, whether belonging to inhabitants of the Commonwealth or not, and whether tangible or intangible, which shall pass by will or by the laws of the Commonwealth regulating intestate succession, or by deed, grant, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, brother, sister, adopted child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband of a daughter of a decedent, or to or for charitable, educational or religious societies or institutions, the property of which is exempt by law from taxation, shall be subject to a tax of five per centum of its value, for the use of the Commonwealth; and all administrators, executors and trustees, and any such grantee, under a conveyance made during the grantor's life, shall be liable for all such taxes, with lawful interest as hereinafter provided, until the same have been paid as hereinafter directed; *provided, however*, that no estate shall be subject to the provisions of this act unless the value of the same, after the payment of all debts, shall exceed the sum of ten thousand dollars.

### SECTION 2. PROPERTY BEQUEATHED TO DIRECT HEIR FOR TERM OF YEARS.

When any person bequeaths or devises any property to or for the use of father, mother, husband, wife, lineal descendant, brother, sister, an adopted child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband of a daughter, during life or for a term of years, and the remainder to a collateral heir or to a stranger to the blood, the value of the prior estate shall, within three months after the date of giving bond by the executor, administrator or trustee, be appraised in the manner hereinafter provided, and deducted from the appraised value of such property, and the remainder shall be subject to a tax of five per centum of its value.

### SECTION 3. PROPERTY, IN EXCESS OF REASONABLE COMPENSATION, BEQUEATHED TO EXECUTORS, ETC.

Whenever a decedent appoints one or more executors or trustees, and in lieu of their allowance makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the probate court having jurisdiction of their accounts, upon the application of any one interested or the treasurer of the Commonwealth, shall fix such compensation.

#### SECTION 4. TAXES PAYABLE TO THE TREASURER OF THE COMMONWEALTH.

All taxes imposed by this act shall be payable to the treasurer of the Commonwealth by the executors, administrators or trustees, at the expiration of two years from the date of their giving bond; *provided*, that whenever legacies or distributive shares are paid within the two years, the taxes thereon shall be payable at the time the same are paid.

#### PAYMENT OF TAX MAY BE SUSPENDED.

In cases, however, where the probate court has ordered the executor or administrator to retain funds to satisfy a claim of a creditor, whose right of action for which does not accrue within the two years, the payment of the tax may be suspended by an order of the court to await the disposition of such claim.

#### INTEREST MAY BE CHARGED ON OVERDUE TAXES, ETC.

If the taxes are not paid when due, interest at the rate of six per centum per annum shall be charged and collected from the time the same became due; and the taxes and interest that may accrue on the same shall be and remain a lien on the property subject to the taxes till the same are paid to the Commonwealth.

#### TAXES MAY BE PAID TO THE COUNTY TREASURER.

An executor, administrator or trustee may, if he prefers, pay the tax to the treasurer of the county in which the probate court having jurisdiction of the estate is located, and the several county treasurers shall account with the treasurer of the Commonwealth.

#### SECTION 5. ADMINISTRATOR, ETC., TO COLLECT THE TAX.

Any administrator, executor or trustee having in charge or trust any property subject to said tax, shall deduct the tax therefrom, or shall collect the tax thereon from the legatee or person entitled to said property, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon.

#### SECTION 6. TAX TO BE DEDUCTED WHEN LEGACIES ARE CHARGED UPON REAL ESTATE, ETC.

Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator or trustee, and the same shall remain a charge upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator or trustee, in the same manner as the payment of the legacy itself could be enforced.

#### SECTION 7. TAX TO BE RETAINED WHEN MONEY IS GIVEN FOR A LIMITED PERIOD, ETC.

If any such legacy is given in money to any person for a limited period, such administrator, executor or trustee shall retain the tax on the whole amount; but if it is not in money, he shall make an application to the court having jurisdiction of his accounts to make an apportionment, if the case requires it, of the sum to be paid into his hands by such legatee on account of said tax, and for such further orders as the case may require.

**SECTION 8. REAL ESTATE MAY BE SOLD FOR PAYMENT OF TAX.**

The probate court may authorize administrators, executors and trustees to sell real estate of one deceased for the payment of said tax, in the same manner as administrators and executors may be authorized to sell real estate for the payment of debts.

**SECTION 9. INVENTORY TO BE FILED WITHIN THREE MONTHS.**

An inventory of every estate, any part of which may be subject to a tax under the provision of this act, shall be filed by the executor, administrator or trustee, within three months from his appointment and qualification. In case such executor, administrator or trustee neglects or refuses to file such inventory as above required, he shall be liable to a penalty of not more than one thousand dollars, and the treasurer of the Commonwealth shall commence in his own name appropriate proceeding against such executor, administrator or trustee for the recovery of such penalty.

**SECTION 10. COPY OF INVENTORY TO BE MAILED TO THE TREASURER OF THE COMMONWEALTH.**

A copy of the inventory of every estate, any part of which may be subject to a tax under the provisions of this act, or if the same can be conveniently separated, then a copy of the inventory of such part of such estate, with the appraisal thereof, shall be sent by mail, by the register of the probate court in which such inventory is filed, to the treasurer of the Commonwealth within thirty days after the same is filed. The fees for such copy shall be paid by the treasurer of the Commonwealth.

**SECTION 11. TREASURER OF THE COMMONWEALTH TO BE INFORMED WHEN REAL ESTATE BECOMES SUBJECT TO TAX.**

Whenever any of the real estate of a decedent shall so pass to another person as to become subject to said tax, the executor, administrator or trustee of the decedent shall inform the treasurer of the Commonwealth thereof within six months after he has assumed the duties of his trust or if the fact is not known to him within that time, then within one month from the time when the fact becomes known to him.

**SECTION 12. TAX TO BE REFUNDED WHEN WRONGFULLY PAID.**

Whenever, for any reason, the devisee, legatee or heir, who has paid any such tax, afterwards refunds any portion of the property on which it was paid, or it is judicially determined that the whole or any part of such tax ought not to have been paid, said tax, or the due proportional part of said tax shall be paid back to him by the executor, administrator or trustee.

**SECTION 13. TO BE ASSESSED ON MARKET VALUE OF PROPERTY.**

The value of such property as may be subject to said tax shall be its actual value as found by the probate court, but the treasure of the Commonwealth, or any person interested in the succession to said property, may apply to the probate court having jurisdiction of the estate, and on such application said court shall appoint three disinterested persons who, being first sworn, shall appraise such property at its actual market value, for the purposes of said tax, and shall make return thereof to said court, which return may be accepted by said court; and if so accepted it shall be binding upon the person by whom the tax is to be paid, and upon the Commonwealth. And the fees of the appraiser shall be fixed by the judge of probate, and paid by the treasurer of the Commonwealth.

#### VALUE OF AN ANNUITY OR LIFE ESTATE.

In case of an annuity or life estate the value thereof shall be determined by the so-called actuaries' combined experience tables and four per cent. compound interest.

#### SECTION 14. COURT TO HAVE JURISDICTION TO DETERMINE ALL QUESTIONS RELATING TO TAX.

The probate court having jurisdiction of the settlement of the estate of the decedent, shall have jurisdiction to hear and determine all questions in relation to said tax that may arise affecting any devise, legacy or inheritance under this act, subject to appeal as in other cases, and the treasurer of the Commonwealth shall represent the interests of the Commonwealth in any such proceedings.

#### SECTION 15. ADMINISTRATION OF ESTATE LIABLE TO TAX WHEN WILL, ETC., IS NOT OFFERED FOR PROBATE WITHIN FOUR MONTHS.

If, upon the decease of any person leaving an estate liable to a tax under the provisions of this act, a will disposing of such estate is not offered for probate, or an application for administration made within four months from the time of such decease, the treasurer of the Commonwealth may make application to the proper probate court, setting forth such fact and praying that an administrator may be appointed, and thereupon said court shall appoint an administrator to administer upon such estate.

#### SECTION 16. FINAL SETTLEMENT NOT TO BE ALLOWED UNTIL ALL TAXES HAVE BEEN PAID.

No final settlement of the account of any executor, administrator or trustee, shall be accepted or allowed by any probate court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this act upon any property or interest therein, belonging to the estate to be settled by said account, have been paid; and the receipt of the treasurer of the Commonwealth for such tax, but in case such tax has been paid to a county treasurer as hereinbefore provided, then such officer's receipt shall be the proper voucher for such payment.

#### SECTION 17. WORDS "PERSON" AND "PROPERTY" DEFINED.

In the foregoing sections the word "person" shall include the plural as well as the singular, and artificial as well as natural persons; the word "property" shall include both real and personal estate, and any forms of interest therein whatsoever, including annuities.

#### SECTION 18. TREASURER MAY BRING SUIT FOR RECOVERY OF TAXES UNPAID.

The treasurer of the Commonwealth shall, within six months after the same shall be due and payable, bring suit in his own name for the recovery of all taxes remaining unpaid, and shall also bring such suit when the judge of a probate court shall certify to him that a final account of any executor, administrator or trustee has been filed in said court, and that the final settlement of such estate is delayed by reason of the non-payment of such tax, and such certificate shall issue upon the application of any heir, legatee, or any person in interest; *provided, however*, that the probate court may extend the time when any tax shall be due and payable whenever the circumstances of the case may require.

*Approved June 11. 1891.*



# STATE OF NEW JERSEY.

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AN ACT to tax intestates' estates, gifts, legacies and collateral inheritance in certain cases.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That after the passage of this act all property which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while being a resident of the state, and all property which shall be within this state, and any part of such property, and any interest therein or income therefrom, which shall be transferred by inheritance, distribution, bequest, devise, deed, grant, sale or gift as aforesaid, made or intended to take effect in possession or enjoyment after the death of the intestate, testator, grantor or bargainor, to any person or persons, or to a body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to such property, or to the income thereof, other than to or for the use of father, mother, husband, wife, children, brother or sister, or lineal descendants born in lawful wedlock, or the wife or widow of a son, or the husband of a daughter, shall be subject to a tax of five dollars on every hundred dollars of the clear market value of such property, to be paid to the treasurer of the state of New Jersey for the use of the state, and all administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed; *provided*, that an estate which may be valued at a less sum than five hundred dollars shall not be subject to said duty or tax.

2. *And be it enacted*, That when any person shall bequeath or devise, convey, grant, sell or give as aforesaid any property, or interest therein, or income therefrom, to a father, mother, husband, wife, children, brother or sister, the widow of a son, or a lineal descendant, during life or for a term of years, and the remainder to a collateral heir of the decedent, or to a stranger in blood, or to a body politic or corporate, the property so passing shall be appraised immediately after the death of said testator or grantor, as the case may be, at what shall then be the fair market value thereof, in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of

years, the tax prescribed by this act on the remainder shall be immediately due and payable to the treasurer of the state of New Jersey, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid; *provided*, that the person or persons, or body politic or corporate beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, or, and in that case, such person or persons, or body politic and corporate, shall give a bond to the state of New Jersey in a penalty three times the amount of the tax arising upon personal estate, with such sureties as the chancellor or a justice of the supreme court may approve, conditioned for the payment of said tax and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the clerk in chancery; *provided further*, that such person shall make a full verified return of such property to the chancellor of the state and file the same in the office of the clerk in chancery within one year from the death of the decedent, and within that period enter into such security and renew the same every five years.

3. *And be it enacted*, That whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of their commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to said tax, and the chancellor or the orphans' court having jurisdiction in the case shall fix such compensation.

4. *And be it enacted*, That all taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the testator, grantor or intestate, as the case may be, and if the same are paid within one year, interest at the rate of six per centum per annum shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrued; *provided*, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per centum shall be allowed and deducted from said tax; and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond, in the form and to the effect prescribed in section two of this act, for the payment of said tax, together with interest.

5. *And be it enacted*, That the penalty of ten per centum per annum imposed by section four hereof for the non-payment of said tax shall not be charged, where in cases by reason of claims made upon the

estate, necessary litigation or other unavoidable cause of delay, the estate of any decedent, or a part thereof, cannot be settled at the end of a year from the death of the decedent, and in such cases only six per centum per annum shall be charged upon the said tax from the expiration of such year until the cause of such delay is removed.

6. *And be it enacted*, That any administrator, executor or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect the tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom, and pay the same to the executor, administrator or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the payment of such legacy might be enforced; if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of his accounts, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

7. *And be it enacted*, That all executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

8. *And be it enacted*, That any sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax or any property, shall be paid by him, within thirty days thereafter, to the treasurer of the state of New Jersey; and the said treasurer shall give, and every executor, administrator or trustee shall take duplicate receipts from him of such payment, one of which receipts he shall immediately send to the comptroller of the state, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts, but an executor, administrator or trustee shall not be entitled to credit in his accounts, nor to discharged from liability for such tax

unless he shall produce a receipt so countersigned by the comptroller, or a copy thereof certified by him.

9. *And be it enacted*, That whenever any of the real estate of which any decedent may die seized shall pass to any body, politic or corporate, or to any person or persons other than the father, mother, husband, wife, lawful issue, wife or widow of a son, or husband of a daughter, or in trust for them, or some of them, it shall be the duty of the executors, administrators or trustees of such decedent to give information thereof in writing to the treasurer of the state within six months after they undertake the execution of their respective duties, or, if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

10. *And be it enacted*, That whenever any debts shall be proven against the estate of a decedent, after the payment of legacies or distribution of property from which the said tax has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the state treasurer, or by them if it has been so paid.

11. *And be it enacted*, That whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this state, standing in the name of a decedent, or in trust for a decedent, which shall be liable to the said tax, such tax shall be paid to the state treasurer on the transfer thereof, otherwise the corporation permitting such transfer shall become liable to pay such tax; *provided*, that such corporation has knowledge before such transfer that said stocks or loans are liable to said tax.

12. *And be it enacted*, That when any amount of said tax shall have been paid erroneously to the state treasurer, it shall be lawful for him, on satisfactory proof rendered to him of such erroneous payment, to refund and pay to the executor, administrator, person or persons who have paid any such tax in error, the amount of such tax so paid; *provided*, that all such applications for the repayment of such tax shall be made within two years from the date of such payment.

13. *And be it enacted*, That in order to fix the value of property of persons whose estates shall be subject to the payment of said tax, the surrogate or ordinary, on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as and whenever occasion may require, whose duty it shall be forthwith to give such notice by mail, and to such persons as the surrogate or ordinary may by order direct, of the time and place he will appraise such property, and at such time and place to appraise the same at its fair market value, and make a report thereof in writing to

said surrogate or ordinary, together with such other facts in relation thereto as said surrogate or ordinary may by order require, to be filed in the office of such surrogate or ordinary, and from this report the said surrogate or ordinary shall forthwith assess and fix the then cash value of all estates, annuities and life estates, or term of years growing out of said estates, and the tax to which the same is liable, and shall immediately give notice thereof by mail to the state treasurer and to all parties known to be interested therein; any person or persons dissatisfied with said appraisement or assessment may appeal therefrom to the ordinary or surrogate of the proper county, within sixty days after the making and filing of such assessment, on paying or giving security, approved by the ordinary or surrogate, to pay all costs, together with whatever tax shall be fixed by said court; the said appraiser shall be paid by the state treasurer out of any funds he may have in his hands on account of said tax, on the certificate of the ordinary or surrogate, at the rate of three dollars per day for every day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses.

14. *And be it enacted*, That any appraiser appointed by virtue of this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors he shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, and imprisoned not exceeding ninety days, and in addition thereto the ordinary or surrogate shall dismiss him from such service.

15. *And be it enacted*, That the ordinary or the surrogate in the county in which the real property is situate of a decedent who was not a resident of the state, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act.

16. *And be it enacted*, That it shall appear to the ordinary or surrogate that any tax accruing under this act has not been paid according to law, such officer shall issue a citation citing the persons interested in the property liable to the tax to appear before the ordinary or surrogate on a day certain, not more than three months after the date of such citation, and show cause why said tax should not be paid; the service of such citation and the time, manner and proof thereof and fees therefor, and the hearing and determination thereon, and the enforcement of the determination or decree shall conform to the provisions of the law for the service of citations now issued by the ordinary or surro-

gate, or issuing out of orphans' courts, and the hearing and determination thereon and its enforcement; and the ordinary or surrogate shall, upon the request of any prosecutor of the pleas or the state treasurer, furnish, without fee, one or more transcripts of such decree, and the same may be by them docketed and filed by the county clerk of any county in the state without fee, and the same shall have the same effect as a lien by judgment.

17. *And be it enacted*, That whenever the state treasurer shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons interested in the property liable to said tax to pay the same, he shall notify the prosecutor of the pleas of the proper county, in writing, of such failure to pay such tax, and the prosecutor of the pleas so notified, if he have probable cause to believe a tax is due and unpaid, shall prosecute the proceeding before the ordinary or the surrogate in the proper county, as provided in section sixteen of this act, for the enforcement and collection of such tax; all costs awarded by such decree, that may be collected after the collection and payment of the tax to the state treasurer, may be retained by the prosecutor of the pleas for his own use.

18. *And be it enacted*, That the ordinary and the surrogate and county clerk of each county shall every three months make a statement, in writing, to the state treasurer of the property from which or the party from whom he has reason to believe a tax under this act is due and unpaid.

19. *And be it enacted*, That whenever the surrogate of any county, or the ordinary, shall certify that there was probable cause for issuing a citation and taking the proceedings specified in section sixteen of this act, the state treasurer shall pay or allow to the proper officials all expenses incurred for services of citation and all other lawful disbursements that have not otherwise been paid.

20. *And be it enacted*, That the comptroller of the state shall furnish to the ordinary and to each surrogate a book in which he shall enter, or cause to be entered, the returns made by appraisers, the cash value of annuities, life estates and term of years, and other property fixed by him, and the tax assessed thereon, and the amounts of any receipts for payments thereon filed with him, which books shall be kept in the office of the ordinary or the surrogate as a public record.

21. *And be it enacted*, That the state treasurer shall collect all taxes that may be due and payable under this act, of which collection and payment he shall make a report, under oath, to the comptroller, on the first Monday in March and September of each year, stating for what estate paid and in such form, and containing such particulars as the comptroller may prescribe.

22. *And be it enacted*, That any person or body politic or corporate shall, upon the payment of the sum of fifty cents at any time, be entitled to a receipt from the state treasurer for the payment of any tax paid under this act, which receipt shall designate on what real property, if any, of which any decedent may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax, and said receipt may be recorded in the clerk's office of the county in which said property is situate, in a book to be kept by said clerk for such purpose, which shall be labeled "collateral tax."

23. *And be it enacted*, That this act shall take effect immediately.

Approved March 23, 1892.

STATE OF NEW JERSEY,  
DEPARTMENT OF STATE.

I, HENRY C. KELSEY, Secretary of State of the State New Jersey, DO HEREBY CERTIFY that the foregoing is a true copy of an act passed by the Legislature of this State, and approved by the Governor the twenty-third day of March, A. D. 1892, as taken from and compared with the original now on file in my office.

L. S.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at Trenton, this Twenty-eighth day of March, A. D. 1892.

HENRY C. KELSEY,  
Secretary of State.





# AMENDMENT—LAWS 1892.

## CHAP. 168.

AN ACT to amend chapter seven hundred and thirteen of the laws of eighteen hundred and eighty-seven, entitled "An act to amend chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five, entitled 'An act to tax gifts, legacies and collateral inheritances in certain cases.'"

Approved by the Governor March 19, 1892. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. Section seventeen of chapter seven hundred and thirteen of the laws of eighteen hundred and eighty seven, entitled "An act to amend chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five, entitled 'An act to tax gifts, legacies and collateral inheritances in certain cases,' " is hereby further amended so as to read as follows :

§ 17. **County treasurer to notify district attorney of failure to pay tax.** Whenever the treasurer or comptroller of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons interested in the property liable to said tax to pay the same, he shall notify the district attorney of the proper county, in writing, of such failure to pay such tax, and the district attorney so notified, if he have probable cause to believe the tax is due and unpaid, shall prosecute the proceeding in the surrogate's court in the proper county, as provided in section sixteen of this act for the enforcement and collection of such tax. All costs awarded by such decree that may be collected after the collection and payment of the tax to the treasurer or comptroller of the proper county, may be retained by the district attorney for his own use. Such costs shall be fixed by the surrogate in his discretion, but shall not exceed in any case where there has not been a contest the sum of one hundred dollars, or where there has been a contest, the sum of two hundred and fifty dollars.

§ 2. This act shall take effect immediately.

## CHAP. 399.

AN ACT in relation to taxable transfers of property.

APPROVED by the Governor April 30, 1892. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

### TAXABLE TRANSFERS OF PROPERTY.

- SECTION 1. Taxable transfers.
2. Exceptions and limitations.
  3. Lien of tax and payment thereof.
  4. Discount, interest and penalty.
  5. Collection of tax by executor, administrators and trustees.
  6. Refund of tax erroneously paid.
  7. Deferred payments.
  8. Taxes upon devisees and bequests in lieu of commissions.
  9. Liability of certain corporations to tax.
  10. Jurisdiction of the surrogate.
  11. Appointment of appraisers.
  12. Proceedings by appraisers.
  13. Determination by surrogate.
  14. Surrogate's assistants in New York city.
  15. Proceedings for the collection of taxes.
  16. Receipt from the county treasurer and comptroller.
  17. Fees of county treasurer and comptroller.
  18. Books and forms to be furnished by the state comptroller.
  19. Reports of surrogate and county clerk.
  20. Reports of county treasurers and comptrollers of the city of New York.
  21. Application of taxes.
  22. Definitions.
  23. Laws repealed.
  24. Saving clause.
  25. Construction.
  26. When to take effect.

§ 1. **Taxable transfers.**—A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property in the following cases :

1. When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of the state.
2. When the transfer is by will or intestate law, of

property within the state, and the decedent was a non-resident of the state at the time of his death.

3. When the transfer is of property made by a resident or by a non-resident, when such non-resident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor; or intended to take effect, in possession or enjoyment, at or after such death. Such tax shall also be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act. Such tax shall be at the rate of five per cent upon the clear market value of such property, except as otherwise prescribed in the next section.

§ 2. **Exceptions and limitations.**—When the property or any beneficial interest therein passes by any such transfer to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of a son or the husband of a daughter, or any child or children adopted as such in conformity with the laws of this state, of the decedent, grantor, donor or vendor, or to any person to whom any such decedent, grantor, donor or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent or to any lineal descendant of such decedent, grantor, donor or vendor born in lawful wedlock; such transfer of property shall not be taxable under this act, unless it is personal property of the value of ten thousand dollars or more, in which case it shall be taxable under this act at the rate of one per centum upon the clear market value of such property. But any property heretofore or hereafter devised or bequeathed to any person who is a bishop or to any religious corporation shall be exempted from and not subject to the provisions of this act.

§ 3. **Lien of tax and payment thereof.**—Every such tax shall be and remain a lien upon the property transferred until paid, and the person to whom the property is so transferred, and the administrators, executors and trustees of every estate so transferred shall be personally liable for such tax until its payment. The tax shall be paid to the treasurer or comptroller of the county of the surrogate having jurisdiction as herein provided; and said treasurer or comptroller shall give, and every executor, administrator or trustee shall take duplicate

receipts from him of such payment, one of which he shall immediately send to the comptroller of the state, whose duty it shall be to charge the treasurer or comptroller so receiving the tax with the amount thereof and to seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but no executor, administrator or trustee shall be entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of this act unless he shall produce a receipt so sealed and countersigned by the comptroller or a copy thereof certified by him, or unless a bond shall have been filed as prescribed by section seven of this act. All taxes imposed by this act shall be due and payable at the time of the transfer, provided, however, that taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event by reason of which the fair market value thereof cannot be ascertained at the time of the transfer as herein provided, shall accrue and become due and payable when the persons or corporations beneficially entitled thereto shall come into actual possession or enjoyment thereof.

**§ 4. Discount, interest and penalty.**—If such tax is paid within six months from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reason of claims made upon the estate necessary litigation or other unavoidable cause of delay, such tax can not be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged. In all cases when a bond shall be given under the provisions of section seven of this act interest shall be charged at the rate of six per cent. from the accrual of the tax until the date of payment thereof.

**§ 5. Collection of tax by executors, administrators and trustees.**—Every executor, administrator, or trus-

tee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such administrator, executor or trustee having in charge or in trust any legacy or property for distribution subject to such tax shall deduct the tax therefrom ; and within thirty days therefrom shall pay over the same to the county treasury or comptroller, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this act, to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor or trustee, and the tax shall remain a lien or charge on such real property until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under section fifteen of this act. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

§ 6. **Refund of tax erroneously paid.**—If any debts shall be proven against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the county treasurer, comptroller of the city of New York or to the state treasurer, or by such treasurer, comptroller, or state treasurer, if such tax has been paid to him. When any amount of said tax shall have been paid erroneously into the state treasury, it

shall be lawful for the comptroller of this state, upon satisfactory proof presented to him of the facts, to require the amount of such erroneous or illegal payment to be refunded to the executor, administrator, trustee, person or persons who have paid any such tax in error from the treasury; or the said comptroller may by order direct and allow the treasurer of any county or the comptroller of the city of New York to refund the amount of any illegal or erroneous payment of such tax out of the funds in his hands or custody to the credit of such taxes, and credit himself with the same in his quarterly account rendered to the comptroller of this state under this act; provided, however, that all applications for such refunding of erroneous taxes shall be made within five years from the payment thereof.

**§ 7. Deferred payment.**—Any person or corporation beneficially interested in any property chargeable with a tax under this act and executors, administrators and trustees thereof, may elect within one year from the date of the transfer thereof as herein provided not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. If it be personal property, the person or persons so electing shall give a bond to the state in penalty of three times the amount of any such tax, with such sureties as the surrogate of the proper county may approve, conditioned for the payment of such tax and interest thereon, at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the surrogate. Such bond must be executed and filed and a full return of such property upon oath made to the surrogate within one year from the date of transfer thereof as herein provided, and such bond must be renewed every five years.

**§. 8 Taxes upon devises and bequests in lieu of commissions.**—If a testator bequeaths or devises property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed or devised, above the amount of commissions or allowances prescribed by law in similar cases shall be taxable under this act.

§ 9. **Liability of certain corporations to tax.**—If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the comptroller of the city of New York on the transfer thereof. No safe deposit company, bank or other institution, person or persons holding securities or assets of a decedent, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent unless notice of the time and place of such intended transfer be served upon the county treasurer or comptroller at least five days prior to the said transfer. And it shall be lawful for the said county treasurer or comptroller, personally or by representative, to examine said securities or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination shall render said safe deposit company, trust company, bank or other institution, person or persons liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of this act.

§ 10. **Jurisdiction of the surrogate.**—The surrogate's Court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this act, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this act, and to do any act in relation thereto authorized by law to be done by a surrogate in other matters or proceedings coming within his jurisdiction; and if two or more surrogates' courts shall be entitled to exercise any such jurisdiction, the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other surrogate. Every petition for ancillary letters testamentary or ancillary letters of administration made in pursuance of the provisions of article seven, title three, chapter eighteen of the Code of Civil Procedure shall set forth the name of the county treasurer or comptroller as a person to be cited as therein prescribed, and a true and correct statement of all the decedent's property in this state and the value thereof; and upon the presentation thereof the surrogate shall issue a citation directed to such county treasurer or

comptroller; and upon the return of the citation the surrogate shall determine the amount of the tax which may be or become due under the provisions of this act and his decree awarding the letters may contain any provision for the payment of such tax or the giving of security therefor which might be made by such surrogate if the county treasurer or comptroller were a creditor of the decedent.

**§ 11. Appointment of appraisers.**—The surrogate, upon the application of any interested party, including county treasurers, or the comptroller of New York city, or upon his own motion, shall, as often as and whenever occasion may require, appoint a competent person as appraiser, to fix the fair market value, at the time of the transfer thereof, of property of persons whose estates shall be subject to the payment of any tax imposed by this act. If the property upon the transfer of which a tax is imposed shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent estate, or shall be a remainder or reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after such transfer, or as soon thereafter as may be practicable, at the fair and clear market value thereof at that time; provided, however, that when such estate, income or interest shall be of such a nature that its fair and clear market value can not be ascertained at such time, it shall be appraised in like manner at the time when such value first became ascertainable. The value of every future, or contingent or limited estate, income, interest or annuity dependent upon any life or lives in being shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies; except that the rate of interest for computing the present value of all future and contingent interests or estates shall be five per centum per annum.

**§ 12. Proceedings by appraisers.**—Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the county treasurer or comp-



troller, and to such persons as the surrogate may by order direct, of the time and place when he will appraise such property. He shall, at such time and place, appraise the same at its fair market value, as herein prescribed, and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing to the said surrogate, together with the depositions of the witnesses examined, and such other facts in relation thereto, and to the said matter as said surrogate may order or require. Every appraiser shall be paid on the certificate of the surrogate at the rate of three dollars per day for every day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses, and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record by the county treasurer or comptroller out of any funds he may have in his hands on account of any tax imposed under the provisions of this act.

§ 13. **Determination by surrogate.**—The report of the appraiser shall be filed in the office of the surrogate, and from such report and other proof relating to any such estate before the surrogate, the surrogate shall forthwith as of course determine the cash value of all estates and the amount of tax to which the same are liable; or, the surrogate may so determine the cash value of all such estates and the amount of tax to which the same are liable without appointing an appraiser. The superintendent of insurance shall, on the application of any surrogate, determine the value of any such future or contingent estates, income or interest limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct. Any person dissatisfied with the appraisement or assessment and determination of tax, may appeal therefrom to the surrogate within sixty days from the fixing, assessing and determination of tax by the surrogate as herein provided, upon filing in the office of the surrogate a written notice of appeal,

which shall state the grounds upon which the appeal is taken. The surrogate shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this act, and of the tax to which it is liable, to all parties known to be interested therein.

§ 14. **Surrogate's assistants in New York city.**—The comptroller of the city and county of New York shall retain out of any funds he may have in his hands on account of said tax a sum of money sufficient to provide the surrogate in the city and county of New York with an assistant, appointed by said surrogate, who shall be known as the transfer tax assistant, whose salary shall be four thousand dollars a year; a transfer tax clerk, whose salary shall be two thousand four hundred dollars a year; an assistant clerk, whose salary shall be one thousand eight hundred dollars a year, and a recording clerk whose salary shall be one thousand three hundred dollars a year, said salaries to be payable monthly; and a further sum of money, not exceeding five hundred dollars a year, to be used to pay the expenses of the said surrogate necessarily incurred in the assessment and collection of said tax, said amounts to be paid upon the certificates and requisitions of said surrogate respectively.

§ 15. **Proceedings for the collection of taxes.**—If the treasurer or comptroller of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons liable therefor to pay the same, he shall notify the district attorney of the county, in writing, of such failure or neglect, and such district attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the surrogate's court for a citation, citing the persons liable to pay such tax to appear before the court on the day specified, not more than three months after the date of such citation, and show cause why the tax should not be paid. The surrogate upon such application, and whenever it shall appear to him that any such tax accruing under this act has not been paid as required by law, shall issue such citation and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon and the enforcement of the determination or order made by the surrogate shall conform to the provisions of the Code of Civil Procedure for the service of citations out

of the surrogate's court, and the hearing and determination thereon and its enforcement so far as the same may be applicable. The surrogate or his clerk shall upon request of the district attorney, treasurer or comptroller of the county, furnish without fee one or more transcripts of such decree, which shall be docketed and filed by the county clerk of any county of the state without fee, in the same manner and with the same effect as provided by law for filing and docketing transcripts of decrees of the surrogate's court. The costs awarded by any such decree after the collection and payment of the tax to the treasurer or comptroller may be retained by the district attorney for his own use. Such costs shall be fixed by the surrogate in his discretion, but shall not exceed in any case where there has not been a contest the sum of one hundred dollars, or where there has been a contest the sum of two hundred and fifty dollars. Whenever the surrogate shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section, the state treasurer shall pay or allow to the treasurer or the comptroller of the county all expenses incurred for the service of citations and other lawful disbursements not otherwise paid. In proceedings to which any county treasurer or comptroller is cited as a party under sections eleven and twelve of this act, the state comptroller is authorized to designate and retain counsel to represent such county treasurer or comptroller therein, and to direct such county treasurer or comptroller to pay the expenses thereby incurred, out of the funds which may be in his hands on account of this tax.

**§ 16. Receipt from the county treasurer and comptroller.**—Any person shall upon the payment of the sum of fifty cents be entitled to a receipt from the county treasurer of any county or the comptroller of the city of New York, or at his option to a copy or a receipt that may have been given by such treasurer or comptroller for the payment of any tax under this act, under the official seal of such treasurer or comptroller, which receipt shall designate upon what real property, if any, of which any decedent may have died seized, such tax shall have been paid, by whom paid, and whether in full of such tax. Such receipt may be recorded in the clerk's office of the county in which such property is situate, in a book to be kept by him for that purpose, which shall be labelled "transfer tax."

**§ 17. Fees of county treasurer and comptroller.—**

The treasurer of each county and the comptroller of the city and county of New York, shall be allowed to retain on all taxes paid and accounted for by him each year, under this act, five per centum on the first fifty thousand dollars, three per centum on the next fifty thousand dollars, and one per centum on all additional sums. Such fees shall be in addition to the salaries and fees now allowed by law to such officers.

**§ 18. Books and forms to be furnished by the state comptroller.—**The comptroller of the state shall furnish to each surrogate, a book, which shall be a public record, and in which he shall enter the name of every decedent, upon whose estate an application to him has been made for the issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places, residences and relationship to him of his heirs at law, the names, and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The surrogate shall also enter in such book the amount of the personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by him under this act, and the value of annuities, life estates, terms of years and other property of any such decedent or given by him in his will or otherwise, as fixed by the surrogate, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this act filed with him. The state comptroller shall also furnish to each surrogate forms for the reports to be made by such surrogate, which shall correspond with the entries to be made in such book.

**§ 19. Reports of surrogate and county clerk.—**Each surrogate shall, on January, April, July and October first of each year, make a report in duplicate, upon the forms furnished by the comptroller containing all the data and matters required to be entered in such book, one of which shall be immediately delivered to the

county treasurer or comptroller and the other transmitted to the state comptroller. The county clerk of each county shall at the same times make reports in duplicate, containing a statement of any deed or other conveyance filed or recorded in his office of any property, which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of such grantor or vendor, the name and place of residence of the grantee or vendee, and a description of the property transferred, one of which duplicates shall be immediately delivered to the county treasurer or comptroller and the other transmitted to the state comptroller.

**§20. Reports of county treasurer and of the comptroller of the city of New York.**—Each county treasurer and the comptroller of the city of New York shall make a report under oath to the state comptroller, on January, April, July and October first of each year, of all taxes received by him under this act, stating for what estate and by whom and when paid. The form of such report may be prescribed by the state comptroller. He shall at the same time pay the state treasurer all taxes received by him under this act and not previously paid into the state treasury, and for all such taxes collected by him and not paid into the state treasury within thirty days from the times herein required, he shall pay interest at the rate of ten per centum per annum.

**§ 21. Application of taxes.**—All taxes levied and collected under this act shall be paid into the treasury of the state for the use of the state, and shall be applicable to the expenses of the state government and to such other purposes as the legislature shall by law direct.

**§ 22. Definitions.**—The words “estate” and “property” as used in this act shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor or vendor, passing or transferred to those not herein specifically exempted from the provisions of this act and not as the property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees or vendees, and shall include all property or interest therein, whether situated within or without this state, over which this

state has any jurisdiction for the purposes of taxation. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift in the manner herein prescribed. The words "county treasurer," "comptroller" and "district attorney" as used in this act shall be taken to mean the treasurer, comptroller or district attorney of the county of the surrogate having jurisdiction as provided in section ten of this act.

§ 23. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed. Such repeal shall not revive a law repealed by any law hereby repealed, but shall include all laws amendatory of the laws hereby repealed.

§ 24. **Saving clause.**—The repeal of a law or any part of it specified in the annexed schedule shall not affect or impair any act done, or right accruing, accrued or acquired, or liability, penalty, forfeiture, or punishment incurred prior to May first, eighteen hundred and ninety-two, under or by virtue of any law so repealed, but the same may be asserted, enforced, prosecuted or inflicted as fully and to the same extent as if such law had not been repealed; and all actions and proceedings, civil or criminal, commenced under or by virtue of the law so repealed and pending on April thirtieth, eighteen hundred and ninety-two, may be prosecuted and defended to final effect in the same manner as they might under the laws then existing, unless it shall be otherwise specially provided by law.

§ 25. **Construction.**—The provisions of this act, so far as they are substantially the same as those of laws existing on April thirtieth, eighteen hundred and ninety-two, shall be construed as a continuation of such laws, modified or amended according to the language employed in this act, and not as new enactments. References in laws not repealed to provisions of laws incorporated into this act and repealed, shall be construed as applying to the provisions so incorporated. Nothing in this act shall be construed to amend or repeal any provision of the Criminal or Penal Code.

§ 26. **When to take effect.**—This act shall take effect on May first, eighteen hundred and ninety-two.

SCHEDULE OF LAWS REPEALED.

Laws of	Chapter.	Sections.
1885.....	483 .....	All.
1887.....	713 .....	All.
1889.....	307 .....	All.
1889.....	479 .....	All.
1891... . . . .	215 .....	All.

## CHAP. 169.

AN ACT to amend chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five, entitled "An act to tax gifts, legacies and collateral inheritances in certain cases."

Approved by the Governor March 19, 1892. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. Section one of chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five as amended by chapter seven hundred and thirteen of the laws of eighteen hundred and eighty-seven and as further amended by chapter two hundred and fifteen of the laws of eighteen hundred and ninety-one is hereby amended to read as follows :

§ 1. **Property passing by will, etc.**—After the passage of this act all property which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state ; or, if the decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state ; or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectancy to any property or the income thereof, other than to or for societies, corporations and institutions now exempted by law from taxation, or from collateral inheritance tax, shall be and is subject to a tax at the rate hereinafter specified, to be paid to the treasurer of the proper county, and in the county of New York, to the comptroller thereof, for the use of the state ; and all heirs, legatees, devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been



paid as hereinafter directed. When the beneficial interest to any personal property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the state of New York, or to any person to whom the deceased, for not less than ten years prior to death, stood in the mutually acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock; in every such case the rate of such tax shall be one dollar on every hundred dollars of the clear market value of such property, and at and after the same rate for every less amount, provided that an estate which may be valued at a less sum than ten thousand dollars shall not be subject to any such duty or tax; but if such beneficial interest is to or in land or real estate in this state, such interest shall be exempt from taxation under this section. In all other cases, the rate shall be five dollars on each and every hundred dollars of the clear market value of all property, and at and after the same rate for any less amount, provided that an estate which may be valued at a less sum than five hundred dollars shall not be subject to any such duty or tax, provided further that any property heretofore devised or bequeathed or which may hereafter be devised or bequeathed to any person who is a bishop or to any religious corporation, shall be exempted from and not be subject to the provisions of this act.

§ 2. This act shall take effect immediately.

## CHAP. 143.

AN ACT to amend chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five, entitled "An act to tax gifts, legacies and collateral inheritances in certain cases, as amended by chapter seven hundred and thirteen of the laws of eighteen hundred and eighty-seven, as amended by chapter three hundred and seven of the laws of eighteen hundred and eighty-nine, as amended by chapter one hundred and sixty-seven of the laws of eighteen hundred and ninety two."

APPROVED by the Governor May 3, 1892. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. Section thirteen of chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five, entitled "An act to tax gifts, legacies and collateral inheritances in certain cases," as amended by chapter seven hundred and thirteen of the laws of eighteen hundred and eighty-seven, as amended by chapter three hundred and seven of the laws of eighteen hundred and eighty-nine, as amended by chapter one hundred and sixty-seven of the laws of eighteen hundred and ninety-two, is hereby amended so as to read as follows :

§ 13. **Surrogate to appoint appraiser.** In order to fix the value of property of persons whose estates shall be subject to the payment of said tax, the surrogate, on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as, and whenever occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons known to have or claim an interest in such property, and to such persons as the surrogate may by order direct, of the time and place he will appraise such property ; and at such time and place, to appraise the same at its fair market value, and for that purpose the said appraiser is authorized by leave of the surrogate to issue subpoenas for and to compel the at-

tendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report thereof, and of such value, in writing to said surrogate, together with the depositions of the witnesses examined and such other facts in relation thereto and to said matter as said surrogate may by order require, to be filed in the office of such surrogate; and from this report the said surrogate shall forthwith assess and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice thereof by mail to all parties known to be interested therein, and the value of every future or contingent or limited estate, income or interest shall, for the purposes of this act, be determined by the rule, method and standards of mortality and of value, which are employed by the superintendent of the insurance department in ascertaining the value of policies of life insurance and annuities, for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per centum per annum; and the superintendent of the insurance department shall, on the application of any surrogate, determine the value of such future or contingent or limited estate, income or interest, upon the facts contained in such report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct. Any person or persons dissatisfied with the appraisement or assessment may appeal therefrom to the surrogate of the proper county within sixty days after the making and filing of such assessment, on paying or giving security approved by the surrogate to pay all costs, together with whatever tax shall be fixed by said court. The said appraiser shall be paid by the county treasurer or comptroller out of any funds he may have in his hands on account of said tax, on the certificate of the surrogate, at the rate of three dollars per day for every day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses including the fees paid such witnesses. The comptroller of the city and county of New York shall retain out of any funds he may have in his hands on account of said tax, a sum of money sufficient to provide the surrogate

in the city and county of New York, with an assistant appointed by said surrogate, who shall be known as the succession tax assistant, whose salary shall be four thousand dollars a year; a succession tax clerk whose salary shall be two thousand four hundred dollars a year; an assistant clerk whose salary shall be one thousand eight hundred dollars a year, and a recording clerk whose salary shall be thirteen hundred dollars a year, said salaries to be payable monthly; and a further sum of money, not exceeding five hundred dollars a year, to be used to pay the expenses of the said surrogate necessarily incurred in the assessment and collection of said tax, said amounts to be paid upon the certificates and requisitions of said surrogate respectively. The county treasurer of the county of Kings shall retain out of any funds he may have in his hands on account of said tax a sum of money sufficient to provide the surrogate of the county of Kings with a clerk, appointed by said surrogate, who shall be known as the "inheritance and legacy tax clerk," and whose salary shall be two thousand four hundred dollars a year, payable monthly, said amount to be paid upon the certificate of said surrogate.

§ 2. This act shall take effect immediately.

# APPENDIX.

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## I.—NEW YORK STATUTES.

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LAWS N. Y. 1887, CHAP. 713.

AN ACT to amend chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five, entitled "An act to tax gifts, legacies and collateral inheritances in certain cases."

PASSED June 25, 1887; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five, entitled "An act to tax gifts, legacies and collateral inheritances in certain cases," is hereby amended so as to read as follows:

§ 1. After the passage of this act all property which shall pass by will or by the intestate laws of this State, from any person who may die seized or possessed of the same while a resident of this State, or if such decedent was not a resident of this State at the time of death, which property, or any part thereof, shall be within this State, or any interest therein, or income therefrom which shall be transferred by deed, grant, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectancy, to any property or to the income thereof, other than to or for the use of his or her father, mother, husband, wife, child, brother, sister, the wife or widow of

State tax upon certain property, &c., passed by will or intestate laws.

a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the State of New York, or any person to whom the deceased for not less than ten years prior to his or her death stood in the mutually acknowledged relation of a parent, and any lineal descendant of such decedent born in lawful wedlock, or the societies, corporations and institutions now exempted by law from taxation by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property, or to the income thereof, shall be and is subject to a tax of five dollars on every hundred dollars of the clear market value of such property, and at and after the same rate for any less amount, to be paid to the treasurer of the proper county, and in the city and county of New York to the comptroller thereof, for the use of the State, and all administrators, executors and trustees, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed, provided that an estate which may be valued at a less sum than five hundred dollars shall not be subject to such duty or tax.

Rate of tax and to whom payable: Estates under \$500 exempt.

Appraisal of property after death of decedent in certain cases.

Duty of surrogate as to valuation.

Tax to be immediately payable thereon. <sup>1</sup>

§ 2. When any grant, gift, legacy or succession upon which a tax is imposed by section first of this act, shall be an estate, income or interest for a term of years or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, at what was the fair and clear market value thereof at the time of the death of the decedent, in the manner hereinafter provided, and the surrogate shall thereupon assess and determine the value of the estate, income or interest subject to said tax, in the manner recorded in section thirteen of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and in the city or county of New York to the comptroller thereof, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid; provided that the person or persons, or body politic or corporate beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons or body politic or cor-

porate, shall give a bond to the people of the State of New York in a penalty of three times the amount of the tax arising upon personal estate, with such sureties as the surrogate of the proper county may approve conditioned for the payment of said tax and interest thereon at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the surrogate of the proper county ; provided, further, that such person shall make a full verified return of such property to said surrogate, and file the same in his office within one year from the death of the decedent, and within that period enter into such security and renew the same every five years.

Persons &c.,  
beneficially in-  
terested may  
give bond  
therefor, &c.

Verified return  
of property to  
surrogate.

§ 3. Whenever a decedent appoints or names one or more executors or trustees and makes a bequest or devise of property to them in lieu of their commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to said tax, and the surrogate's court having jurisdiction in the case shall fix such compensation.

Executors or  
trustees, com-  
missioners of,  
when liable to  
tax.

§ 4. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per cent. per annum shall be charged and collected from the time said tax accrued ; provided, that if said tax is paid within six months from the accruing thereof a discount of five per cent. shall be allowed and deducted from said tax, and in all cases where the executors, administrators or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section two of this act for the payment of said tax, together with interest.

Taxes, when  
due and paya-  
ble.

Interest there-  
on.

§ 5. The penalty of ten per cent. per annum imposed by section four hereof, for the non-payment of said tax, shall not be charged where in cases by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, the estate of any decedent, or a part thereof, cannot be settled at the end of eighteen months, from the death of the decedent, and in such cases only six per cent. per annum shall be charged upon the said

Penalty for  
non-payment of  
tax.

When and how  
chargeable.

tax, from the expiration of said eighteen months until the cause of such delay is removed.

Deductions of  
tax from lega-  
cies by trustees,  
etc.

§ 6. Any administrator, executor or trustee having in charge, or trust, any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect the tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom, and pay the same to the executor, administrator or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the payment of such legacy might be enforced; if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of his accounts, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

Payments, how  
made if legacy  
is not in money.

Tax, how en-  
forced.

Other provis-  
ions as to limit-  
ed bequests,  
etc.

Sale of proper-  
ty of decedent  
to pay tax.

§ 7. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

Payments,  
when to be  
made to county  
treasurer.

§ 8. Every sum of money retained by an executor, administrator or trustee, or paid into his hands, for any tax on any property, shall be paid by him within thirty days thereafter, to the treasurer of the proper county, or in the city and county of New York, to the comptroller thereof, and the said treasurer or comptroller shall give, and every executor, administrator or trustee shall take duplicate receipts from him of such payment, one of which receipts he shall immediately send to the comptroller of the state, whose duty it shall be to charge the treasurer or comptroller so receiving the tax, with the amount thereof, and shall seal said receipt with the seal of his office, and countersign the same and return it to the

Transmission  
of receipt there-  
for to State  
Comptroller.



executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts, but an executor, administrator or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, unless he shall produce a receipt so sealed and countersigned by the comptroller or a copy thereof certified by him.

Return of receipt, countersigned as voucher to executor, etc.

§ 9. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons other than his or her father, mother, husband, wife, lawful issue, brother, sister, wife or widow of a son, or husband of a daughter, or child or children adopted by such decedent according to law, or any person to whom the deceased for not less than ten years prior to his or her death, stood in the mutually acknowledged relation of a parent, or in trust for them, or some of them, it shall be the duty of the executors, administrators or trustees of such decedent, to give information thereof in writing to the treasurer or comptroller of the county where such real estate is situate, within six months after they undertake the execution of their respective duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

Executor, etc., to notify county treasurer, etc., as to passing of real estate.

§ 10. Whenever any debts shall be proven against the estate of a decedent, after the payment of legacies or distribution of property from which the said tax has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the county treasurer, comptroller, or to the state treasurer, or by them if it has been so paid.

Repayment of proportion of tax paid, in cases of debts proven afterwards.

§ 11. Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this State, standing in the name of a decedent, or in trust for a decedent, which shall be liable to the said tax, such tax shall be paid to the treasurer or comptroller of the proper county on the transfer thereof, otherwise the corporation permitting such transfer shall become liable to pay such tax, provided that such corporation had knowledge before such transfer that said stocks or loans are liable to said tax.

Tax upon transfer of stocks by foreign executor, etc.

§ 12. When any amount of said tax shall have been paid erroneously to the state treasurer, it shall be lawful for him, on satisfactory proof rendered to the comptroller by said county

Tax erroneously paid, refunding of.

treasurer or comptroller of such erroneous payment, to refund and pay to the executor, administrator, person or persons who have paid any such tax in error, the amount of such tax so paid, provided that all such applications for the payment of such tax shall be made within five years from the date of such payment.

Surrogate to  
appoint ap-  
praiser of cer-  
tain estates.

Duty of ap-  
praiser.

To report to  
surrogate.

Surrogate to fix  
cash values of  
estates and tax  
thereon.

Rules of com-  
putation.

Appeals from  
appraisement.

§ 13. In order to fix the value of property of persons whose estates shall be subject to the payment of said tax, the surrogate, on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as, and whenever occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons known to have or claim an interest in such property, and to such persons as the surrogate may by order direct, of the time and place he will appraise such property; and at such time and place, to appraise the same at its fair market value, and make a report thereof in writing to said surrogate, together with such other facts in relation thereto as said surrogate may by order require, to be filed in the office of such surrogate; and from this report the said surrogate shall forthwith assess and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice thereof by mail to all parties known to be interested therein, and the value of every future or contingent or limited estate, income or interest shall, for the purposes of this act, be determined by the rule, method and standards of mortality and of value which are employed by the superintendent of the insurance department in ascertaining the value of policies of life insurance and annuities, for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per cent. per annum; and the superintendent of the insurance department shall, on the application of any surrogate, determine the value of such future or contingent or limited estate, income or interest, upon the facts contained in such report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computations adopted therein is correct. Any person or persons dissatisfied with appraisement or assessment may appeal therefrom to the surrogate of the proper county within sixty days after the making and filing of such assessment, on paying or giving security approved by the

surrogate to pay all costs, together with whatever tax shall be fixed by said court. The said appraiser shall be paid by the county treasurer or comptroller out of any funds he may have in his hands on account of said tax, on the certificate of the surrogate, at the rate of three dollars per day for every day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses. The comptroller of the city and county of New York shall retain out of any funds he may have in his hands on account of said tax, a sum of money sufficient to provide the surrogate in the city and county of New York with a clerk appointed by said surrogate who shall be known as the "collateral inheritance and legacy tax clerk," and whose salary shall be two thousand, four hundred dollars a year, payable monthly, and a further sum of money, not exceeding five hundred dollars a year, to be used to pay the expenses of said surrogate necessarily incurred in the assessment and collection of said tax, said amounts to be paid upon the certificates and requisitions of said surrogate respectively.<sup>1</sup>

Compensation  
of appraiser.

§ 14. Any appraiser appointed by virtue of this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors, he shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, and imprisoned not exceeding ninety days, and in addition thereto the surrogate shall dismiss him from such service.

Appraiser ac-  
cepting bribe,  
how punished.

§ 15. The surrogate's court in the county in which the real property is situate of a decedent who was not a resident of the State, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

Jurisdiction of  
surrogate's  
court.

§ 16. If it shall appear to the surrogate's court that any tax accruing under this act has not been paid according to law, it shall issue a citation citing the persons interested in the property liable to the tax to appear before the court on a certain day, not more than three months after the date of such citation, and show

Citation to is-  
sue to person  
liable for tax,  
if remaining un-  
paid.

<sup>1</sup> L. 1889, ch. 307, as amended.

Proceedings thereupon.	cause why said tax should not be paid. The service of such citation and the time, manner and proof thereof, and fees therefor, and the hearing and determination thereon, and the enforcement of the determination or decree shall conform to the provisions of the Code of Civil Procedure, for the service of citations now issuing out of surrogates' courts, and the hearing and determination thereon and its enforcement. And the surrogate, or clerk of the
Decree, how docketed and filed.	surrogate's court, shall, upon the request of the district-attorney, treasurer of the county, or comptroller of the county of New York, furnish, without fee, one or more transcripts of such decree as provided in section twenty-five hundred and fifty-three of the
Transcripts thereof, when to be furnished.	Code of Civil Procedure, and the same shall be docketed and filed by the county clerk of any county in the State without fee, in the same manner, and with the same effect as provided by said section for filing and docketing transcripts of decrees of such courts.
County treasurer to notify district-attorney of failure to pay tax.	§ 17. Whenever the treasurer or comptroller of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons interested in the property liable to said tax to pay the same, he shall notify the district-attorney of the proper county, in writing, of such failure to pay such tax, and the district-attorney so notified, if he have
Duty of district-attorney.	probable cause to believe a tax is due and unpaid, shall prosecute the proceeding in the surrogate's court in the proper county, as provided in section sixteen of this act for the enforcement and
Costs.	collection of such tax. All costs awarded by such decree, that may be collected after the collection and payment of the tax, to the treasurer or comptroller of the proper county, may be retained by the district-attorney, hereafter elected or appointed, for his own use.
Quarterly statements of surrogate and county clerk.	§ 18. The surrogate and county clerk of each county shall, every three months, make a statement in writing to the county treasurer or comptroller of his county of the property from which or the party from which he has reason to believe a tax under this act is due and unpaid.
Payment of certain expenses of county treasurer.	§ 19. Whenever the surrogate of any county shall certify that there was probable cause for issuing a citation and taking the proceedings specified in section seventeen of this act, the state treasurer shall pay or allow to the treasurer or comptroller of any county all expenses incurred for services of citation and his other lawful disbursements that have not otherwise been paid.

§ 20. The comptroller of the State shall furnish to each surrogate a book in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon and the amounts of any receipts for payments thereon filed with him, which books shall be kept in the office of the surrogate as a public record.

Surrogate's record, what to contain.

§ 21. The treasurer of each county and the comptroller of the county of New York shall collect and pay the state treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the comptroller on the first Monday in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the comptroller may prescribe; and for all such taxes collected by him and not paid to the state treasurer by the first day of October and April of each year he shall pay interest at the rate of ten per cent. per annum.

Payment of tax to state treasurer.

Reports thereon to comptroller.

Interest upon unpaid amounts.

§ 22. The treasurer of each county and the comptroller of the city and county of New York shall be allowed to retain, on all taxes paid and accounted for by him each year under this act, in addition to his salary or fees now allowed by law, five per cent. on the first fifty thousand dollars so paid and accounted for by him, three per cent. on the next fifty thousand dollars so paid and accounted for by him, and one per cent. on all additional sums so paid and accounted for by him.

Fees of county treasurer and N. Y. City comptroller.

§ 23. Any person or body politic or corporate shall, upon payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county, or comptroller of the county of New York, or a copy of the receipt, at his option, that may have been given by said treasurer or comptroller for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any decedent may have died seized, said tax has been paid, and by whom paid, and whether or not it is in full of said tax, and said receipt may be recorded in the clerk's office of the county in which said property is situate, in a book to be kept by said clerk for such purpose, which shall be labeled "Collateral Tax."

Receipt from county treasurer, &c., as to payment of tax, how recorded.

"Collateral Tax" Record.

§ 24. All taxes levied and collected under this act, shall be paid into the treasury of the State, for the uses of the State, and

Uses of taxes paid and how applied.

shall be applicable to the payment of the general expenses of the State government and to such other purposes as the Legislature may by law direct.

Repeal.

§ 25. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed ; but this act shall apply to all estates of deceased persons where no assessment of the tax has been made to which such estate or estates are liable under the provisions of the foregoing act.<sup>1</sup>

§ 2. This act shall take effect immediately.

#### CHAPTER 553.

AN ACT to amend chapter one hundred and ninety-one of the laws of eighteen hundred and eighty-nine, entitled " An act to limit the amount of property to be held by corporations organized for other than business purposes," and relating to such corporations.

APPROVED by the Governor June 7, 1890. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Chapter one hundred and ninety-one of the laws of eighteen hundred and eighty-nine, entitled " An act to limit the amount of property to be held by corporations organized for other than business purposes," is hereby amended so as to read as follows:

Amount of  
property of cer-  
tain corpora-  
tions, limited.

§ 1. Any religious, educational, bible, missionary, tract, literary, scientific, benevolent or charitable corporation, or corporation organized for the enforcement of laws relating to children or animals, or for hospital, infirmary, or other than business purposes, may take and hold, in its own right or in trust for any purpose comprised in the objects of its incorporation, property not exceeding in value three million dollars, or the yearly income derived from which shall not exceed two hundred and fifty thousand dollars, notwithstanding the provisions of any special or general act heretofore passed or certificate of incorporation affecting such

<sup>1</sup> As amended, L. 1889, ch. 479.

corporations. In computing the value of such property no increase in value arising otherwise than from improvements made thereon, shall be taken into account. The personal estate of such corporations shall be exempt from taxation, and the provisions of chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five, entitled "An act to tax gifts, legacies and collateral inheritances in certain cases," and the acts amendatory thereof, shall not apply thereto, nor to any gifts to any such corporation by grant, bequest or otherwise; provided, however, that this provision shall not apply to any moneyed or stock corporation deriving an income or profit from the capital or otherwise, or to any corporation which has the right to make dividends or to distribute profits or assets among its members.

Exemption from certain taxation and collateral inheritance act.

Proviso.

§ 2. This act shall not affect the right of any such corporation to take and hold property exceeding in value the amount specified in section one of this act, provided such right is conferred upon such corporation by special statute; nor affect any statute by which its real estate is exempt from taxation.

Special statutes not affected hereby.

§ 3. This act shall take effect immediately.

## II.—PENNSYLVANIA STATUTE.

PENNSYLVANIA L. 1887, p. 79.

AN ACT to provide for the better collection of collateral inheritance taxes.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That all estates, real, personal and mixed, of every kind whatsoever, situated within this State, whether the person or persons dying seized thereof be domiciled within or out of this State, and all such estates situated in another State, Territory, or country, when the person, or persons, dying seized thereof shall have their domicile, within this Commonwealth, passing from any person, who may die seized or possessed of such estates, either by will, or under the intestate laws of this State, or any part of such estate, or estates, or interest therein, transferred by deed, grant, bar-

Designation of estates subject to the payment of collateral inheritance tax.

gain, or sale, made or intended to take effect, in possession or enjoyment after the death of the grantor, or bargainer to any person, or persons, or to bodies corporate or politic, in trust or otherwise, other than to or for the use of father, mother, husband, wife, children and lineal descendants born in lawful wedlock, or the wife or widow of the son of the person dying seized or possessed thereof, shall be and they are hereby made subject to a tax of five dollars on every hundred dollars of the clear value of such estate or estates, and at and after the same rate for any less amount, to be paid to the use of the Commonwealth; and all owners of such estates, and all executors and administrators and their sureties shall only be discharged from liability for the amount of such taxes or duties, the settlement of which they may be charged with, by having paid the same over for the use aforesaid, as hereinafter directed: *Provided*, That no estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to the duty or tax.

Owners, executors, &c., only to be discharged by payment.

Estates of less than \$500 not to be subject to tax.

Executors, accepting bequests, &c., in lieu of commissions, to pay tax on amount above a fair compensation.

Rate of, to be fixed by the court.

Persons entitled to rever-sionary interests need not pay tax nor be chargeable with interest thereon until actual possession is acquired.

Tax to be assessed upon value at time possession begins.

Tax may be paid before possession is had. Basis of assessment.

SECTION 2. Where a testator appoints or names one or more executors and makes a bequest or devise of property to them, in lieu of their commissions or allowances, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed what would be a fair compensation for their services, such excess shall be subject to the payment of the collateral inheritance tax; the rate of compensation to be fixed by the proper courts having jurisdiction in the case.

SECTION 3. In all cases where there has been or shall be a devise, descent or bequest to collateral relatives or strangers, liable to the collateral inheritance tax, to take effect in possession, or come into actual enjoyment after the expiration of one or more life estates, or a period of years, the tax on such estate shall not be payable, nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate, by the termination of the estates for life or years, and the tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner as aforesaid: *Provided*, That the owner shall have the right to pay the tax at any time prior to his coming into possession, and in such cases, the tax shall be assessed on the value of the estate at the time of the payment of the tax, after deducting the value of the life estate or estates for years: *And provided further*, That the tax on real



estate shall remain a lien on the real estate on which the same is chargeable until paid. And the owner of any personal estate shall make a full return of the same to the register of wills of the proper county within one year from the death of the decedent, and within that time enter into security for the payment of the tax to the satisfaction of such register; and in case of failure so to do, the tax shall be immediately payable and collectible.

Tax to remain a lien until paid.

Return of personal estate.

Security.

SECTION 4. If the collateral inheritance tax shall be paid within three months after the death of the decedent, a discount of five per centum shall be made and allowed; and if the said tax is not paid at the end of one year from the death of the decedent, interest shall then be charged at the rate of twelve per centum per annum on such tax; but where from claims made upon the estate, litigation, or other unavoidable cause of delay, the estate of any decedent or a part thereof cannot be settled up at the end of the year from his or her decease, six per centum per annum shall be charged upon the collateral inheritance tax, arising from the unsettled part thereof, from the end of such year until there be default: *Provided further*, That where real or personal estate withheld by reason of litigation or other cause of delay in manner aforesaid from the parties entitled thereto, subject to said tax, has not been, or shall not be productive to the extent of six per centum per annum, they shall not be compelled to pay a greater amount as interest to the Commonwealth than they may have realized, or shall realize from such estate during the time the same has been or shall be withheld as aforesaid.

When discount of 5 per cent. is to be allowed.

When interest of 12 per cent. to be charged.

When only 6 per cent. interest.

When interest need not exceed interest made by estate.

SECTION 5. The executor, or administrator, or other trustee, paying any legacy or share in the distribution of any estate, subject to the collateral inheritance tax, shall deduct therefrom at the rate of five dollars in every hundred dollars, upon the whole legacy or sum paid; or if not money, he shall demand payment of a sum, to be computed at the same rate, upon the appraised value thereof, for the use of the Commonwealth; and no executor or administrator shall be compelled to pay or deliver any specific legacy or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value as aforesaid; and in case of neglect or refusal on the part of said legatee to pay the same, such specific legacy or article, or so much thereof as shall be necessary, shall be sold by such executor or administrator at public sale, after notice to such legatee, and the balance

Executors, &c., to deduct tax from pecuniary legacy or share.

To demand payment on specific legacy.

Money due  
State to be  
promptly paid.

Provision  
where legacy is  
given for limited  
period upon  
a condition or  
contingency.

Rule where leg-  
acy is charged  
upon real es-  
tate.

Duty of execu-  
tors, &c., as re-  
gards real es-  
tate.

Executors, &c.,  
to take receipts.

that may be left in the hands of the executor or administrator shall be distributed, as is or may be directed by law; and every sum of money retained by any executor or administrator, or paid into his hands on account of any legacy or distributive share, for the use of the Commonwealth, shall be paid by him without delay.

SECTION 6. If the legacy subject to collateral inheritance tax be given to any person for life, or for a term of years, or for any other limited period, upon a condition or contingency, if the same be money, the tax thereon shall be retained upon the whole amount; but if not money, application shall be made to the orphans' court having jurisdiction of the accounts of the executors or administrators to make apportionment, if the case requires it, of the sum to be paid by such legatees, and for such further order relative thereto as equity shall require.

SECTION 7. Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee, before paying the same, shall deduct therefrom at the rate aforesaid, and pay the amount so deducted to the executor, and the same shall remain a charge upon such real estate until paid, and the payment thereof shall be enforced by the decree of the orphans' court, in the same manner as the payment of such legacy may be enforced.

SECTION 8. Whenever any real estate of which any decedent may die seized shall be subject to the collateral inheritance tax, it shall be the duty of executors and administrators to give information thereof to the register of the county, where administration has been granted, within six months after they undertake the execution of their respective duties, or if the fact be not known to them within that period, within one month after the same shall have come to their knowledge, and it shall be the duty of the owners of such estate, immediately upon the vesting of the estate, to give information thereof to the register having jurisdiction of the granting of administration.

SECTION 9. It shall be the duty of any executor or administrator, on the payment of collateral inheritance tax, to take duplicate receipts from the register, one of which shall be forwarded forthwith to the Auditor-General, whose duty it shall be to charge the register receiving the money with the amount, and seal with the seal of his office, and countersign the receipt and transmit it to the executor or administrator, whereupon it shall be a proper

voucher in the settlement of the estate; but in no event shall an executor or administrator be entitled to a credit in his account by the register, unless the receipt is so sealed and countersigned by the Auditor-General.

SECTION 10. Whenever any foreign executor, or administrator, or trustee, shall assign or transfer any stocks or loans in this Commonwealth, standing in the name of the decedent, or in trust for a decedent, which shall be liable for the collateral inheritance tax, such tax shall be paid, on the transfer thereof, to the register of the county where such transfer is made; otherwise the corporation permitting such transfer shall become liable to pay such tax.

Foreign executors to pay tax on stocks.

SECTION 11. Whenever debts shall be proven against the estate of a decedent, after distribution of legacies from which the collateral inheritance tax has been deducted, in compliance with this act, and the legatee is required to refund any portion of a legacy, a portion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the State or county treasury, or by the county treasurer, if it has been so paid.

When tax to be refunded for debts paid.

SECTION 12. It shall be the duty of the register of wills of the county in which letters testamentary, or of administration, are granted, to appoint an appraiser as often as, and whenever occasion may require, to fix the valuation of estates which are, or shall be, subject to collateral inheritance tax, and it shall be the duty of such appraiser to make a fair and conscionable appraisement of such estates, and it shall further be the duty of such appraiser to assess and fix the cash value of all annuities and life estates growing out of said estates, upon which annuities and life estates the collateral inheritance tax shall be immediately payable out of the estate at the rate of such valuation: *Provided*, That any person or persons not satisfied with said appraisement shall have the right to appeal, within thirty days, to the orphans' court of the proper county or city, on paying, or giving security to pay, all costs, together with whatever tax shall be fixed by said court, and upon such appeal said courts shall have jurisdiction to determine all questions of valuation, and of the liability of the appraised estate for such tax, subject to the right of appeal to the supreme court as in other cases.

Appraiser, how appointed and duties of.

SECTION 13. It shall be a misdemeanor in any appraiser, appointed by the register to make any appraisement in behalf of the

Penalty for appraiser taking reward, &c.

Commonwealth, to take any fee or reward from any executor or administrator, legatee, next of kin, or heir of any decedent, and for any such offense the register shall dismiss him from such service, and upon conviction in the quarter sessions, he shall be fined not exceeding five hundred dollars, and imprisoned not exceeding one year, or both, or either, at the discretion of the court.

Returns made  
by appraiser to  
be recorded.

SECTION 14. It shall be the duty of the register of wills to enter in a book, to be provided at the expense of the Commonwealth, to be kept for that purpose, and which shall be a public record the returns made by all appraisers under this act, opening an account in favor of the Commonwealth against the decedent's estate, and the register may give certificate of payment of such tax from said record, and it shall be the duty of the register to transmit to the Auditor-General, on the first day of each month, a statement of all returns made by appraisers during the preceding month, upon which the taxes remain unpaid, which statement shall be entered by the Auditor-General in a book to be kept by him for that purpose. And whenever any such tax shall have remained due and unpaid for one year, it shall be lawful for the register to apply to the orphans' court, by bill or petition, to enforce the payment of the same, whereupon said court, having caused due notice to be given to the owner of the real estate charged with the tax, and to such other persons as may be interested, shall proceed, according to equity, to make such decrees, or orders, for the payment of the said tax, out of such real estate, as shall be just and proper.

On default of  
payment of tax,  
citation to issue  
to parties liable.

SECTION 15. If the register shall discover that any collateral inheritance tax has not been paid over, according to law, the orphans' court shall be authorized to cite the executors or administrators of the decedent, whose estate is subject to the tax, to file an account or to issue a citation to the executors, administrators, or heirs, citing them to appear on a certain day and show cause why the said tax should not be paid, and when personal service cannot be had, notice shall be given for four weeks, once a week, in at least one newspaper published in said county, and if the said tax shall be found to be due and unpaid, the said delinquent shall pay said tax and costs. And it shall be the duty of the register, or of the Auditor-General, to employ an attorney, of the proper county, to sue for the recovery and amount of such tax, and the Auditor-General is authorized and empowered, in settlement of

accounts of any register, to allow him costs of advertising and other reasonable fees and expenses incurred in the collection of taxes.

SECTION 16. The register of wills, of the several counties of this Commonwealth, upon their filing with the Auditor-General the bond hereafter required, shall be the agents of the Commonwealth for the collection of the collateral inheritance tax; and for services rendered in collecting and paying over the same, the said agents shall be allowed to retain for their own use, such percentage as may be allowed by the Auditor-General, not exceeding five per centum, on all taxes paid and accounted for: *Provided*, That this section shall not apply to the fees of registers elected prior to the passage of this act.

Registers of wills, compensations.

SECTION 17. The said register shall give bond to the Commonwealth in such penal sum as the orphans' court of the county may direct, with two, or more, sufficient sureties for the faithful performance of the duties hereby imposed, and for the regular accounting and paying over of the amounts to be collected and received, and said bond, on its execution and approval, by the said orphans' court, to be forwarded to the Auditor-General.

To give bond.

SECTION 18. Until bond and security be given, as required by the preceding section, the said collateral inheritance tax shall be received and collected by the county treasurer as heretofore, and in such cases all the provisions of this act, relating to collection and payment by registers, shall apply to the county treasurer.

County treasurer, when to collect tax.

SECTION 19. It shall be the duty of the register of wills, of each county, to make returns and payment to the State treasurer of all the collateral inheritance taxes he shall have received, stating for what estate paid, on the first Mondays of April, July, October and January, in each year, and for all taxes collected by him and not paid over within one month, after his quarterly return of the same, he shall pay interest at the rate of twelve per centum per annum until paid.

Register to make quarterly returns.

SECTION 20. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied: *Provided*, That the said lien shall be limited to the property chargeable therewith: *And provided further*, That all collateral inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to have been paid and cease to be a lien as against any purchasers of real estate: *And*

Tax to remain a lien until paid.

*provided further*, That all taxes due and legally demandable at the date of the passage of this act, the collection of which would be barred by the provisions hereof, shall not be barred if suit shall be brought therefor within one year from the date of the passage of this act.

SECTION 21. All laws, or parts of laws, heretofore approved, relating to the collection of the collateral inheritance tax, and inconsistent herewith, be and the same are hereby repealed.

Approved *May 6, 1887*.

### III.—MARYLAND STATUTE.

Maryland Code, Vol. 2, 1888, p. 1,242.

#### COLLATERAL INHERITANCE TAX.<sup>1</sup>

SEC. 102. All estates, real, personal and mixed, money, public and private securities for money of every kind, passing from any person who may die seized and possessed thereof, being in this State, or any part of such estate or estates, money or securities, or interest therein, transferred by deed, will, grant, bargain, gift or sale, made or intended to take effect in possession after the death of the grantor, bargainor, devisor or donor, to any person or persons, bodies politic or corporate, in trust or otherwise, other than to or for the use of the father, mother, husband, wife, children and lineal descendants of the grantor, bargainor, testator, donor or intestate, shall be subject to a tax of two and a half per centum on every hundred dollars of the clear value of such estates, money or securities; and all executors and administrators shall only be discharged from liability for the amount of such tax, the payment of which they may be charged with, by paying the same for the use of this State, as hereinafter directed; *provided*, that no estate which may be valued at a less sum than five hundred dollars, shall be subject to the tax imposed by this section.<sup>2</sup>

<sup>1</sup> P. G. L. (1860), art. 81, sec. 124; 1844, ch. 237, sec. 1; 1864, ch. 200; 1874, ch. 483, sec. 113; 1880, ch. 444.

<sup>2</sup> *State v. Dorsey*, 6 Gill, 388; *Tyson v. State*, 28 Md. 577; *Cit. Nat. Bank v. Sharp*, 53 Md. 521. P. G. L. (1860), art. 81, sec. 125; 1844, ch. 237, sec. 2; 1864, ch. 200; 1874, ch. 483, sec. 114.

§ 103. Every executor or administrator, to whom administration may be granted, before he pays any legacy, or distributes the shares of any estate liable to the tax imposed by the preceding section, shall pay to the register of wills of the proper county or city, two and a half per centum of every hundred dollars he may hold for distribution among the distributees or legatees, and at that rate for any less sum, for the use of the State; this section shall not be construed so as to release any tax already fixed on any collateral inheritance, distributive share or legacy.<sup>1</sup>

§ 104. When any species of property other than money or real estate shall be subject to said tax, the tax shall be paid on the appraised value thereof as filed in the office of the register of wills of the proper county or city; and every executor shall have power under the order of the orphans' court, to sell, if necessary, so much of said property as will enable him to pay said tax.<sup>2</sup>

§ 105. Every executor or administrator shall, within thirteen months from the date of his administration, pay said tax on distributive shares and legacies in his hands, and on failure to do so he shall forfeit his commissions.<sup>3</sup>

§ 106. In all cases where real estate of any kind is subject to the said tax, the orphans' court of the county in which administration is granted shall appoint the same persons, who may have been appointed to value the personal estate, to appraise and value all the real estate of the deceased within the State.<sup>4</sup>

§ 107. The form of the warrant to such appraisers shall be the same as to appraisers of personal property, except that the words "real estate" shall be inserted therein instead of the words "goods, chattels and personal estate," and the words "price of property" instead of the word "article," and the appraisers shall take the oath prescribed for appraisers of personal estate, except that the words "real estate" shall be substituted for the words "goods, chattels and personal estate," and their duties and proceedings shall, in every respect, be the same as those of the appraisers of personal estate.<sup>5</sup>

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<sup>1</sup> State v. Dorsey, 6 Gill, 388; Ibid. sec. 126; 1844, ch. 237, sec. 2; 1874, ch. 483, sec. 115.

<sup>2</sup> Ibid. sec. 127; 1845, ch. 202, sec. 1; 1874, ch. 483, sec. 116.

<sup>3</sup> Ibid. sec. 128; 1847, ch. 222, sec. 1; 1874, ch. 483, sec. 117.

<sup>4</sup> P. G. L. (1860), art. 81, sec. 129; 1847, ch. 222, sec. 1; 1874, ch. 483, sec. 118.

<sup>5</sup> Ibid. sec. 130; 1847, ch. 222, sec. 1; 1874, ch. 483, sec. 119.

§ 108. If the estate or property lies in more than one county, and it is not convenient for the appraisers to visit the other county, the court may appoint two appraisers in said county.<sup>1</sup>

§ 109. The inventory of the real estate shall be entirely separate and distinct from that of the personal estate.<sup>2</sup>

§ 110. On the death or refusal of any appraiser to act, the court may appoint another in his place.<sup>3</sup>

§ 111. The appraisers shall return the inventory, when completed, to the executor or administrator, whose duty it shall be to return the same to the office of the register of wills, to which the inventory of the personal estate is returnable, and within the same time and under like penalty, and shall make oath that said inventory or inventories is or are a true and perfect inventory or inventories of all the real estate of the deceased, within this State, that has come to his knowledge, and that, should he thereafter discover any other real estate belonging to the deceased, in this State, he will return an additional inventory thereof.<sup>4</sup>

§ 112. The appraisement thus made shall be deemed and taken to be the true value of the said real estate, upon which the said tax shall be paid.<sup>5</sup>

§ 113. The amount of said tax shall be a lien on said real estate from the death of the decedent, who shall have died seized and possessed thereof, until the same shall be paid.<sup>6</sup>

§ 114. The executor or administrator shall collect the same from the parties liable to pay said tax, or their legal representatives, within thirteen months from the date of his administration, and pay the same to the register of wills of the county or city in which administration is granted; and if the said parties shall neglect or fail to pay the same within that time, the orphans' court of said county shall order the executor or administrator to sell for cash so much of said real estate as may be necessary to pay said tax and all the expenses of said sale, including the commissions of the executor or administrator thereon; and after the report of said

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<sup>1</sup> Ibid. sec. 131; 1847, ch. 222, sec. 1; 1874, ch. 483, sec. 120.

<sup>2</sup> Ibid. sec. 132; 1847, ch. 222, sec. 1; 1874, ch. 483, sec. 121.

<sup>3</sup> Ibid. sec. 133; 1847, ch. 222, sec. 3; 1874, ch. 483, sec. 122.

<sup>4</sup> P. G. L. (1860), art. 81, sec. 134; 1847, ch. 222, sec. 4; 1874, ch. 483, sec. 123.

<sup>5</sup> Ibid. sec. 135; 1844, ch. 237, sec. 5; 1846, ch. 344, sec. 2; 1874, ch. 483, sec. 124.

<sup>6</sup> Ibid. sec. 136; 1847, ch. 222, sec. 5; 1874, ch. 483, sec. 125.



sale, the ratification thereof and the payment of the purchase money, the executor or administrator may execute a valid deed of the estate sold and not before.<sup>1</sup>

§ 115. Whenever any estate, real, personal or mixed, of a decedent, shall be subject to the tax mentioned in the thirteen preceding sections, and there be a life estate, or interest for a term of years, or a contingent interest given to one party, and the remainder or reversionary interest to another party, the orphans' court of the county or city in which the administration is granted, shall determine in its discretion, and at such time as it shall think proper, what proportion the party entitled to said life estate, or interest, for a term of years, or contingent interest, shall pay of said tax; and the judgment of said court shall be final and conclusive; and the party entitled to said life estate, or interest for a term of years, or other contingent interest, shall, within thirty days after the date of such determination, pay to the register of wills his proportion of said tax; and thereafter the said court shall, from time to time, after the determination of the preceding estate, and as the remainder of said estate shall vest in the party or parties entitled in remainder or reversion, determine, in its discretion, what proportion of the residue of said tax shall be paid by the party or parties in whom the estate shall so vest; and the judgment of said court shall be final and each of the parties successively entitled in remainder or reversion shall pay his proportion of said tax to the register of wills within thirty days after the date of such determination as to him; and the amount of said tax shall be and remain a lien upon such estate until the same shall be paid.<sup>2</sup>

§ 116. If any of the parties mentioned in the last preceding section, shall refuse or neglect to pay the several proportions, so decreed by the orphans' court, within thirty days from the time of such decree, the court shall order and direct the executor or administrator to sell all the right, title and interest of such party in and to said estate or property, or so much thereof as the court may deem necessary to pay his proportion of said tax and all expenses of sale.<sup>3</sup>

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<sup>1</sup> Ibid. sec. 137; 1846, ch. 344, sec. 1; 1847, ch. 222, sec. 6; 1874, ch. 483, sec. 126; 1880, ch. 455.

<sup>2</sup> *Tyson v. State*, 28 Md. 577; P. G. L. (1860), art. 81, sec. 138; 1847, ch. 222, sec. 6; 1874, ch. 483, sec. 127.

<sup>3</sup> Ibid. sec. 139; 1847, ch. 222, sec. 7; 1874, ch. 483, sec. 128.

§ 117. The bond of an executor or administrator shall be liable for all money he may receive under this article of taxes, or for the proceeds of the sales of real estate received by him thereunder.<sup>1</sup>

§ 118. If any executor or administrator shall fail to perform any of the duties imposed upon him by this article, the orphans' court of the county in which the administration was granted, may revoke his administration, and his bond shall be liable, and the same proceedings shall be had against him as if his administration had been revoked for any other cause.<sup>2</sup>

§ 119. The power and duties of an administrator *de bonis non*, or with the will annexed, shall be the same under this article as those of an executor or administrator, and he shall be subject to the same liabilities.<sup>3</sup>

§ 120. In all cases where any estate, real, personal or mixed, shall be subject to the collateral inheritance tax imposed by this article, and no administration is taken out on the estate of the person who died seized and possessed thereof, within ninety days after the death of said person, the orphans' court of the county in which administration should be granted, shall issue a summons for the parties entitled to administration to show cause wherefore they do not administer.<sup>4</sup>

§ 121. If the parties entitled by law to administration do not administer within a reasonable time to be fixed by the said court, or if they be incapable, or being capable, they decline or refuse to appear on proper summons or notice, administration shall be granted to such person as the court may deem proper.<sup>5</sup>

§ 122. In all cases where application is made to the orphans' court or register of wills of any county or the City of Baltimore, for letters testamentary or of administration, the said court or register shall inquire of the person making the application whether he knows or believes that there is any real estate of the decedent liable to the collateral inheritance tax, and the answer of such applicant shall be given on oath if the court or register requires it.<sup>6</sup>

<sup>1</sup> Ibid. sec. 140; 1847, ch. 222, sec. 8; 1874, ch. 483, sec. 129.

<sup>2</sup> Ibid. sec. 141; 1847, ch. 222, sec. 9; 1874, ch. 483, sec. 130.

<sup>3</sup> P. G. L. (1860), art. 81, sec. 142; 1847, ch. 222, sec. 10; 1874, ch. 483, sec. 131.

<sup>4</sup> Ibid. sec. 143; 1847, ch. 222, sec. 10; 1874, ch. 483, sec. 132.

<sup>5</sup> Ibid. sec. 144; 1847, ch. 222, sec. 10; 1874, ch. 483, sec. 133.

<sup>6</sup> Ibid. sec. 145; 1844, ch. 184, sec. 4; 1874, ch. 483, sec. 134.

§ 123. The register of wills shall give to the person paying the collateral inheritance tax imposed by this article, duplicate receipts for said tax, one of which shall be forwarded by said person to the treasurer, to be by him preserved, and copies thereof shall be evidence in suit upon the bond of said register.<sup>1</sup>

§ 124. It shall be the duty of the several clerks and the several registers of wills in this State to account with and pay to the treasurer, on the first Monday of March, June, September and December, in each and every year, all sums of money received by them respectively, for which they shall be allowed a commission of five per centum upon the amount so paid over.<sup>2</sup>

§ 125. If any of the said clerks or registers shall fail to account and pay over as required in the preceding section, the comptroller shall, in thirty days thereafter, give notice thereof to the State Attorney for the county or city whose duty it shall be to put the bond of such clerk or register in suit for the use of the State, in which suit a recovery shall be had for the amount appearing to be due, with interest at the rate of 10 per cent. per annum, from the date or dates when the same is payable as aforesaid, which recovery shall be evidence of misbehavior, and upon conviction thereof the said clerk or register shall be removed from office, which shall thereupon be filled as prescribed by the Constitution; and such failure on the part of any clerk or register shall amount to a forfeiture of the commission to which he would otherwise be entitled.

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<sup>1</sup> Ibid. sec. 146; 1845, ch. 71, sec. 3; 1847, ch. 222, sec. 12; 1862, ch. 157; 1868, ch. 196; 1874, ch. 483, sec. 135.

<sup>2</sup> *Banks v. State*, 60 Md. 305; P. G. L. (1860), art. 81, sec. 147; 1845, ch. 71, secs. 2-3; 1847, ch. 222, sec. 12; 1868, ch. 196; 1874, ch. 483, sec. 136.

## IV.—CONNECTICUT STATUTE.

L. 1889, p. 106, Chap. CLXXX.

## AN ACT IMPOSING A COLLATERAL INHERITANCE TAX.

*Be it enacted by the Senate and House of Representatives in General Assembly convened:*

Collateral inheritance imposed.

in-tax

SECTION 1. All property within the jurisdiction of this State, and any interest therein, whether belonging to inhabitants of this State or not, and whether tangible or intangible, which shall pass by will or by the intestate laws of this State, or by deed, grant, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, the lineal descendant of any adopted child, the wife or widow of a son, the husband of the daughter of a decedent, or some charitable purpose, or purpose strictly public within this State, shall be liable to a tax of five per centum of its value, above the sum of one thousand dollars, for the use of the State, and all administrators, executors and trustees, and any such grantee under a conveyance made during the grantor's life, shall be liable for all such taxes, with lawful interest as hereinafter provided, until the same shall have been paid as hereinafter directed.

Tax on remainderman, how ascertained.

§ 2. When any person shall bequeath or devise any property to or for the use of father, mother, husband, wife, lineal descendant, an adopted child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband of a daughter, during life or for a term of years, and the remainder to a collateral heir or to a stranger to the blood, the value of the prior estate shall, within sixty days after the death of the testator, be appraised in the manner hereinafter provided, and deducted, together with the sum of one thousand dollars, from the appraised value of such property, and the tax on the remainder shall be payable one year from the death of said testator, and together with any interest that may accrue on the same, be and remain a lien on said property till paid to the State.

§ 3. Whenever a decedent appoints one or more executors or trustees, and in lieu of their allowance makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the court of probate having jurisdiction of their accounts shall fix such compensation.

On legacy to executor or trustee.

§ 4. All taxes imposed by this act shall be payable to the treasurer of the State by the executors, administrators or trustees, one year from the death of said testator, or intestate, or the qualification of said trustee; and if the same are not so paid, interest at the rate of nine per centum shall be charged them and collected from the time said tax became due.

Tax, when payable.

§ 5. Any administrator, executor or trustee having in charge or trust any property subject to said tax, shall deduct the tax therefrom, or shall collect the tax thereon from the legatee or person entitled to said property, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon.

Administrator to collect or retain tax.

§ 6. Whenever any legacies subject to said tax shall be charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator or trustee, and the same shall remain a charge upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator or trustee, in the same manner as the payment of the legacy itself could be enforced.

Tax on legacy charge on real estate.

§ 7. If any such legacy be given in money to any person for a limited period, such administrator, executor or trustee, shall retain the tax on the whole amount; but if it be not in money, he shall make an application to the court having jurisdiction of his accounts to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatee on account of said tax, and for such further order as the case may require.

Tax on estate for years.

§ 8. All administrators, executors and trustees shall have power to sell so much of the estate of the deceased as will enable them to pay said tax in the same manner as they may be empowered to do for the payment of his debts.

Sale of estate to pay tax.

Inventory of  
estate subject  
to tax to be sent  
State treasurer.

§ 9. A copy of the inventory of every estate, any part of which may be subject to a tax under the provisions of this act, or if the same can be conveniently separated, then a copy of such part of such estate, with the appraisal thereof, shall be sent by mail, by the clerk or the judge of the court of probate in which such inventory is filed, to the treasurer of the State within ten days after the same is filed. The fees for such copy shall be paid by the executor, administrator or trustee.

Duty of execu-  
tor, &c., as to  
real estate be-  
coming subject  
to tax.

§ 10. Whenever any of the real estate of a decedent shall so pass to another person, as to become subject to said tax, the executor, administrator or trustee of the decedent shall inform the State treasurer thereof within six months after he has assumed the duties of his trust, or if the fact is not known to him within that time, then within one month from the time that it does become so known to him.

Refunding  
over-paid tax.

§ 11. Whenever, for any reason, the devisee, legatee or heir who has paid any such tax shall refund any portion of the property on which it was paid, or it shall be judicially determined that the whole or any part of such tax ought not to have been paid, said tax, or the due proportional part of said tax, shall be paid back to him by the executor, administrator or trustee.

Value of prop-  
erty, how ascer-  
tained.

§ 12. The value of such property as may be subject to said tax shall be its actual value as found by the court of probate, but the State treasurer, or any person interested in the succession to said property, may apply to the court of probate having jurisdiction of the estate, and on such application said court shall appoint three disinterested persons who, being first sworn, shall view and appraise such property at its actual market value, for the purposes of said tax, and shall make return thereof to said court, which return may be accepted by said court in the same manner as the original inventory of such estate is accepted, and if so accepted it shall be binding upon the person by whom this tax is to be paid, and by the State. And the fees of the appraiser shall be fixed by the judge of probate and paid by the executor, administrator or trustee. In case of an annuity or life estate the value thereof shall be determined by the so-called actuaries' combined experience tables and five per centum compound interest.

Jurisdiction of  
probate court  
as to questions  
relative to tax.

§ 13. The court of probate having either principal or ancillary jurisdiction of the settlement of the estate of the decedent, shall have jurisdiction to hear and determine all questions in relation

to said tax that may arise affecting any devise, legacy or inheritance under this act subject to appeal as in other cases, and the State treasurer shall represent the interests of the State in any such proceedings.

§ 14. The judge of each probate district shall, as often as once in six months, render to the State treasurer a statement of the property within the jurisdiction of his court that has become subject to such tax during such period, the number and amount of such taxes as will accrue during the next six months, so far as the same can be ascertained from the probate records, and the number and amount of such taxes as are due and unpaid.

Statements to be rendered the treasurer by probate judges.

§ 15. The fees of courts of probate for the duties required of them by this act shall be for each order, appointment, decree, judgment or approval of inventory or report required hereunder, one dollar; for the filing and endorsement of each paper, and for copies of records, the fees that are now allowed by law for the same. And the administrators, executors, trustees or other persons paying said tax shall be entitled to deduct the amount of all such fees paid to the court of probate from the amount of said tax to be paid to the treasurer of the State.

Probate fees.

§ 16. No final settlement of the account of any executor, administrator or trustee, shall be accepted or allowed by any court of probate unless it shall show, and the judge of said court shall find, that all taxes imposed by the provisions of this act, upon any property or interest therein belonging to the estate to be settled by said account, shall have been paid, and the receipt of the treasurer of the State for such tax shall be the proper voucher for such payment.

Final settlement of estate not to be allowed until.

§ 17. In the foregoing act the word "person" shall be construed to include the plural as well as the singular, and artificial as well as natural persons; the word "property" shall be construed to include both real and personal estate, and any forms of interest therein whatsoever, including annuities; and the words "charitable purpose" shall be construed to include gifts to any educational, benevolent, ecclesiastical, or missionary corporation, association or object.

Definitions.

Approved June 5, 1889.





# FORMS

## FOR USE UNDER NEW YORK STATUTE.<sup>1</sup>

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### I.

#### PETITION OF DISTRICT ATTORNEY.

*To the Surrogate's Court of the City and County of* :

The petition of , of the city of , respectfully shows:

I. That your petitioner is the district attorney of the city and county of .

II. That on or about the day of 18 , at died,

III. That said deceased who duly qualified as such, and said letters are still in force.

IV. That said decedent died seized or possessed of property within this State or subject to its laws, and the value of which was not less than the sum of five hundred dollars.

V. That by certain of said property of said decedent thereupon passed to the following persons: [*names of heirs, &c.*].

VI. That none of the persons designated in the foregoing paragraph, No. V of this petition, stood in the relation to the deceased of a father, mother, husband, wife, child, brother, sister, wife or widow of a son, husband of a daughter, a child adopted as such in conformity with the laws of this State, a person to whom said deceased, for not less than ten years prior to his death, stood in the mutually acknowledged relation of a parent nor a lineal descendant of said deceased, born in lawful wedlock.

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<sup>1</sup> Most of the forms here given were adopted by Surrogate Ransom, and some of them will be found reported in *Matter of Astor*, 6 Dem. 419. They may be changed to suit the circumstances of particular cases.

VII. That the property so passing or some part thereof is subject to the tax imposed by Chapter 483 of the Laws of this State, passed June 10th, 1885, entitled "An Act to tax gifts, legacies, and collateral inheritances in certain cases," and Chapter 713 of the Laws of 1887, amending the same.

The foregoing allegations are made on information and belief.

VIII. Your petitioner further shows that the comptroller [*or*, county treasurer] of the city and county of                      has notified your petitioner in writing of the refusal or neglect of the person interested in said property to pay the same, and that no part of said tax has been paid, and your petitioner has probable cause to believe that the same still remains due and unpaid,

WHEREFORE, your petitioner prays that a citation issue herein to the persons designated in paragraph V hereof, and to said                      , citing them to appear before this court on a day to be designated therein, and show cause why the tax under the act aforesaid should not be paid, and said property be appraised if necessary for that purpose.

Dated,                      day of                      18                      .

*District Attorney of the City  
and County of                      .*

STATE OF NEW YORK,                      }  
CITY AND COUNTY OF NEW YORK. } ss.

                    , being duly sworn, says, that he has read the foregoing petition and knows the contents thereof, and that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

*Sworn to before me, this                      }*  
*day of                      , 18                      . }*

## II.

### PETITION OF EXECUTOR, &c.

*Title.*

To                      , Surrogate.

The petition of                      respectfully shows :

*First.* Your petitioner is                      , and as such is a person interested in the estate of the above named decedent.

*Second.* That the said decedent departed this life on the day of        in        and that he was a resident [*or*, non-resident] of this State.

*Third.* That said decedent left a last will and testament, which was on the        day of        duly admitted to probate, and that        are the executors of said will and their post-office addresses are :

*Fourth.* That, as your petitioner is informed and believes, the property of said decedent, passing by said will, or some portion thereof, or some interest therein, is subject to the payment of the tax imposed by the law to tax gifts, legacies and collateral inheritances in certain cases.

*Fifth.* That all the persons who are interested in said estate and who are entitled to notice of all proceedings herein, including the comptroller of the city of New York [*or*, county treasurer], and their post-office addresses, are as follows, viz.:

WHEREFORE, your petitioner prays that you will appoint some competent person as appraiser as provided by law.

And your petitioner will ever pray.<sup>1</sup>

*Petitioner.*

[*Verification.*]

### III.

#### ORDER FOR CITATION.

At a Surrogate's Court held at  
the office of the Surrogate,  
in the County of        ,  
on the        day of        18    .

Present : HON.       

, *Surrogate.*

IN THE MATTER OF THE ESTATE OF

*Deceased.*

On reading and filing the petition of        , of the county of  
New York, verified the        day of        , 18    . It is

<sup>1</sup> This form may be changed to suit intestate cases.

ORDERED, that a citation issue herein in accordance with the prayer of said petition.

, *Surrogate.*

#### IV.

#### CITATION.

*The People of the State of New York*, by the Grace of God, free and independent. To                      SEND GREETING:

You and each of you are hereby cited and required personally to be and appear in the Court of the Surrogate of the city and county of New York, at the County Court House, in said city, on the                      day of                      , 18                      , at                      o'clock in the                      noon, to show cause why the tax imposed by Chapter 483 of the Laws of 1885, of the State of New York, as amended by Chapter 713 of the Laws of 1887, should not be paid on property passing to you under the will of                      deceased, proved herein by decree entered the                      day of                      , 18                      , and why such property should not be appraised according to law, if necessary for that purpose.

And such of you hereby cited as are under the age of twenty-one years, are required to appear by your guardian, if you have one, or if you have none, to appear and apply for one to be appointed, or in the event of your neglect or failure to do so, a guardian will be appointed by the surrogate to represent and act for you in the proceeding.

*In Testimony Whereof*, we have caused the Seal of the Surrogate's Court to be hereunto affixed.

*Witness*,                      , Esq., Surrogate of our said county, at the city of New York, the                      day of                      , in the year of our Lord, one thousand eight hundred and

*Clerk of the Surrogate's Court.*

#### V.

#### ORDER APPOINTING APPRAISER.

*Caption.*

*Estate of*

On reading and filing the petition of                      praying for the ap-

pointment of some competent person as appraiser, under and in pursuance of the law to tax gifts, legacies and collateral inheritances in certain cases, it is

ORDERED, That \_\_\_\_\_, Esq., be and he hereby is appointed such appraiser.

It is further ordered that said appraiser shall give the notice required by said law in the manner and at the time therein set forth (and said notice shall be \_\_\_\_\_ days) to the following persons and to all other persons known to have or claim an interest in the property of \_\_\_\_\_ the decedent named in the above entitled proceeding, subject to the payment of said tax, viz.: [*Here take in names of persons to be served with notices.*]

## VI.

### NOTICE OF APPRAISEMENT.

SURROGATE'S COURT, COUNTY OF NEW YORK.

IN THE MATTER OF THE APPRAISAL,  
UNDER THE COLLATERAL INHER-  
ITANCE TAX ACT, OF THE PROP-  
ERTY OF

*Deceased.*

You will please to take notice that, by virtue of an order of Hon. \_\_\_\_\_, Surrogate of the county of New York, made and dated the \_\_\_\_\_ day of \_\_\_\_\_, 1890, and pursuant to the provisions of Chapter 483, Laws of the State of New York, passed on the 10th day of June, 1885, and as amended by Chapter 713 of the Laws of 1887, entitled "An Act to Tax Gifts, Legacies, and Collateral Inheritances in certain cases," I shall, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon of that day, at the office of \_\_\_\_\_, No. \_\_\_\_\_ street, in the city of New York, proceed to appraise at its fair market value, all the property of said \_\_\_\_\_ deceased, late of said city, passing by his last will and testament or by the intestate laws of the State of New York, which is subject to the payment of the tax imposed by the said act.

New York, \_\_\_\_\_, 18\_\_\_\_.

\_\_\_\_\_, Appraiser.

To

VII.

**NOTICE TO SUPERINTENDENT OF INSURANCE.**

CHAMBERS OF THE SURROGATE,  
New York County.

NEW YORK, , 18 .

*Dear Sir:*—In pursuance of Chapter 483, Laws of 1885, as amended by Chapter 713 Laws of 1887, you are hereby requested to determine and ascertain the values of the following estates, annuities and interests.

Name.	Age.	Legacy or Estate.	Value or Amount.	

To Superintendent of the  
Insurance Department.

Yours respectfully,  
*, Surrogate.*

VIII.

**SUPERINTENDENT'S REPORT.**

*In re* Chapter 483 L. 1885, as amended by ch. 713 L. 1887.

INSURANCE DEPARTMENT.

Estate of \_\_\_\_\_, Deceased.

ALBANY, N. Y., 18 .

*Sir*:—In reply to your request of the                  inst., I give below  
the present values desired:

Name.	Legacy.	P. V. at Date.

Very respectfully,

, Superintendent.

To Hon. \_\_\_\_\_, *Surrogate* \_\_\_\_\_ *County, N. Y.*

## IX.

APPRAISER'S REPORT.<sup>1</sup>

SURROGATE'S COURT, COUNTY OF NEW YORK.

<p>IN THE MATTER OF THE APPRAISAL,          UNDER THE COLLATERAL INHERIT-          ANCE TAX ACT, OF THE PROPERTY          of  <i>Deceased.</i></p>
--

*To the Surrogate's Court, County of New York.*

I, the undersigned, who was, by an order, made and entered on the       day of       , 18       , appointed appraiser, under and in pursuance of the law to tax gifts, legacies and collateral inheritances in certain cases, a certified copy of which order is hereto attached, respectfully report:

*First.* That forthwith after my said appointment I gave notice by mail, postage prepaid, to all persons known to have or claim an interest in all property subject to the tax imposed by said law, and to the following named persons, being those named by the surrogate in the said order, of the time and place I would appraise the property of       , deceased, subject to the payment of said tax; a true copy of said notice is also hereto attached, viz.: [*Here take in names of all persons entitled to notice and notified.*]

*Second.* I further report, that at the time and place in said notice stated, to wit, on the       day of       , 18       , at No.       , in the city of New York, and at other and subsequent times and at divers places, I appraised all the property of said       , deceased, now subject to the payment of said tax, at its fair market value, as follows, to wit:<sup>2</sup>

<sup>1</sup> This form was used in the Matter of Minturn, N. Y. Law Jour. July 18, 1890, and is given more in detail for its practical use.

<sup>2</sup> This clause should contain a minute description of the property appraised, name of owner or person interested therein, and his post-office address, and the fair market value of such property.

A legacy in cash of \$5,000 payable on the death of decedent's wife who, at the time of his death, was of the age of 78 years and 7 months, the present value of said sum of \$5,000 being . . . . . \$4,166.66 bequeathed to [*giving in succession the name of each legatee, and particulars as to estate taken under the will, or by law in cases of intestacy*].

. . . . .  
 , the testator, by his will, among other things, directs his executors on the death of his wife to pay out of his residuary estate certain sums of money to individuals therein named; and in case of the death of any said persons before his wife, or before he or she shall become entitled to said sum of money, then such sum is to be paid to the issue of the one so dying, and failing such issue, becomes part of the residue of the estate of decedent which, under his will is bequeathed to his son . . . , and who, if he should predecease decedent's wife has a power of appointment, by a will, of such residue. The names of such persons together with sums respectively bequeathed to them and the present values thereof at the time of decedent's death are as follows:

. . . . .  
 In the event of any of said persons or their issue becoming entitled to such property above mentioned, the present cash values thereof as above appraised will then become subject to the payment of the tax imposed by said act, but the liability to such payment cannot now be determined.

The following are the appearances before the appraiser: The executors, by . . . , attorneys, who object to any appraisal of the property passing to the corporations mentioned in the will, on the ground that the life tenant (decedent's wife) is not dead, and that the tax, if any, on said property is not payable until after her death; and also that the legacies to individuals named in the will, and payable on the death of decedent's wife, cannot now be taxed on the ground that such persons may never become entitled thereto, and which cannot be determined until the death of the life-tenant, &c.

. . . . .  
 All of which is respectfully submitted.

Dated New York, . . . , 18 . . .

. . . , Appraiser.



## X.

**SURROGATE'S NOTICE.**

SURROGATE'S COURT,  
CITY AND COUNTY OF NEW YORK.

---

IN THE MATTER OF THE ESTATE

*of*

*Deceased.*

---

You are hereby notified that at the Surrogate's Court of the city and county of New York, to be held on the            day of           , 18   , at 10.30 A. M., at the County Court House, in the city of New York, I shall, from the return and report of the appraiser filed herein on the            day of           , 18   , assess and fix the cash value of all such interest, estate, annuity, legacy or property as you and each of you are given, or entitled to receive from or out of the estate left by the said           , deceased, and the amount of the tax to which the same is liable under Chapter 483 of the Laws of 1885 and the acts amendatory thereof and supplemental thereto.

Dated New York,           , 18   .

*, Surrogate.*

*To*

## XI.

## DECREE ASSESSING AND FIXING TAX.

At a Surrogate's Court held in  
and for the County of New  
York, at the New County  
Court House, on the  
day of           , 18   .

Present: HON.           

, Surrogate.

IN THE MATTER OF THE ESTATE  
of  
Deceased.

*Decree Assessing and  
Fixing Collateral In-  
heritance Tax.*

On reading and filing the report of           , Esq., the appraiser  
herein, and after hearing           in support of said report, and  
in opposition thereto, ORDERED,

*First.* The said report is in all respects confirmed.

*Second.* The cash value at this date of the property men-  
tioned and described in said report, which is subject to the pay-  
ment of the tax imposed by the law taxing gifts, legacies, and  
collateral inheritances is as follows;

Interest of.....\$.  
" " .....\$.

*Third.* That the tax to which the said property and interests  
are liable is as follows, viz.:<sup>1</sup>

On Interest of.....\$.  
" " .....\$.

<sup>1</sup> In a proceeding brought by the district attorney to compel payment, it  
is considered that the decree should contain some specific direction on the part  
of the legatee, executor or administrator to pay the tax ascertained to be due,  
together with the costs of the proceeding.

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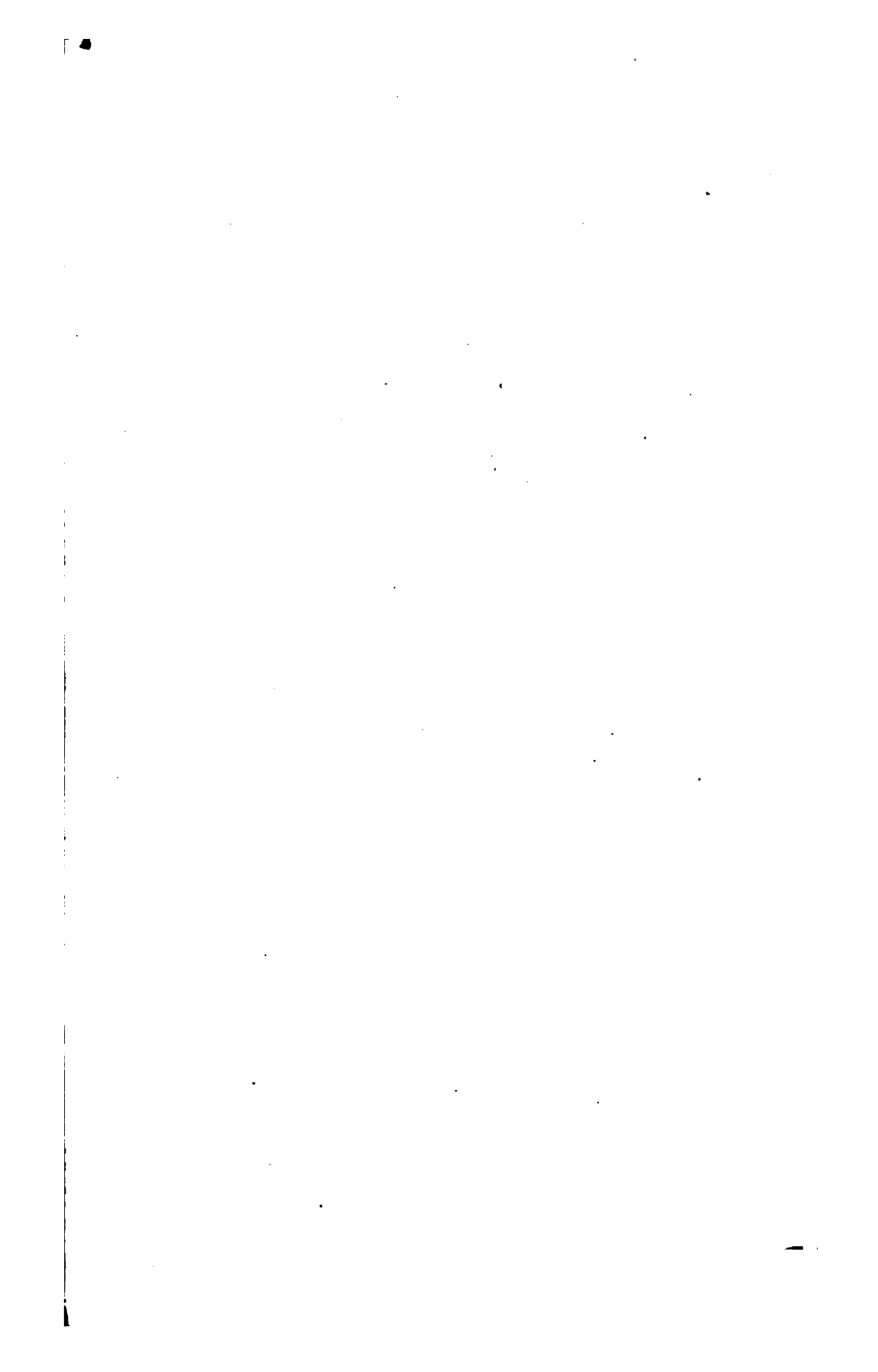


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